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Subject: State Aid SA.55902 (2019/N) – Germany – Budget increase for tax reduction for flights to and from certain North Sea Islands

Sir,

1. PROCEDURE

- (1) By electronic notification of 6 December 2019, Germany notified the European Commission (“Commission”), in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”), of its intention to amend an existing State aid scheme (“the initial scheme”) which was first approved by the Commission in 2012 (“2012 Decision”)¹. It allows for a reduction from the air transport tax for flights to and from certain North Sea Islands.

2. DESCRIPTION OF THE MEASURE

2.1. Objective of the aid measure

- (2) The objective of the initial scheme is to improve connectivity between the islands and the mainland by reducing the air transport tax for passengers travelling to and from such islands, who are not already exempted under a similar scheme exempting passengers domiciled on certain domestic islands from air transport tax². Therefore, under the current scheme, passengers receiving a tax reduction of 80% are workers, service providers, business people and tourists.

1 Commission Decision of 19.12.2012 in State aid SA.32020, Tax reduction for flights to and from certain North Sea Islands, OJ C 122 of 27.04.2013, p. 8.

2 Commission Decision of 29.06.2011 in State aid SA.32888, Exemption from air transport tax as regards flights of people domiciled on islands and other cases, OJ C 70 of 08.03.2012, p. 3 as

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- (3) The air transport tax is imposed when a passenger departs from a German airport by airplane or by helicopter. It is levied on the air transport company and passed on to the passengers as part of the ticket price. The tax reduction covers departures to and from German, Dutch or Danish islands in the North Sea, which are only accessible by sea, provided the destination from such islands is not more than 100 kilometres from the coast.
- (4) A detailed description of the scheme including its objective is set out in recitals (6) to (15) of the 2012 Decision.

2.2. Budget and duration of the initial scheme

- (5) Based on recital (17) of the 2012 Decision, the estimated annual budget of the scheme is around EUR 1,000,000.
- (6) According to the recital (18) of the 2012 Decision, the initial scheme is unlimited in time, but Germany took the obligation to re-notify the scheme in ten years. Therefore, the scheme will expire in 1 January 2021.

2.3. Legal basis

- (7) The national legal basis for the scheme is the Air Traffic Tax Act (*Luftverkehrsteuergesetz*) (“Act”). Under § 11(1)(1) of that Act, an increase of the air transport tax will be implemented as of 1 April 2020.

2.4. Modifications to the initial scheme – budget increase

- (8) The main features of the initial scheme and its objective remain unaltered. The modifications to the scheme under the present notification remain limited to the increase of budget.
- (9) In the context of the German Climate Action Programme 2030, incentives are being created to reduce the emission of harmful greenhouse gases and to encourage citizens to act in a more climate-friendly manner. One part of those measures is the increase of the air transport tax to render flights more expensive, as the previous tax amounts have not led to any significant lasting change in the growth of rates of passengers and hence to a significant modal shift to rail. Therefore, the current air transport tax applicable to destinations, which are subject to the present scheme, of EUR 7.50 per passenger, will be increased to EUR 13.03 per passenger with effect from 1 April 2020.
- (10) Such increase of the tax amount will lead to the increase of the aid amount under the tax reduction and thus increase the budget of the scheme.
- (11) According to Germany, taking into account the relevant number of passengers from 2018, the current budget of the scheme will be exceeded by 32% in 2020. Considering the fact that the air transport tax increase will materialise fully in 2021, Germany expects that in 2021 the current budget will be exceeded by

prolonged by Commission Decision of 03.12.2015 in State aid SA.42392, OJ C 25 of 22.01.2016, p. 4.

approximately 43% based on 2018 passenger numbers, and by 65% in case of a 5% passenger number increase.

- (12) Therefore, Germany is planning to increase the annual budget of the current scheme from EUR 1,000,000 to EUR 2,000,000 for the remaining duration of the scheme, i.e. until 1 January 2021.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (13) The Commission notes that all of the elements and information provided in the initial scheme remain unchanged, except for the increase of budget.
- (14) In recitals (30) to (41) of the 2012 Decision, the Commission concluded that the measure constitutes State aid within the meaning of Article 107(1) TFEU. The amendment to the initial scheme does not alter the Commission's previous assessment.

3.2. Compatibility of the aid

- (15) As analysed in recitals (44) to (47) of the 2012 Decision, the scheme cannot be considered compatible as State aid of social character under Article 107(2)(a) TFEU. Nor can the scheme be considered to fulfil the public service obligation, as had been also concluded in recital (48) of the 2012 Decision. The budget increase does not alter that assessment.
- (16) The Commission concluded in recitals (49) to (54) of the 2012 Decision that the air transport tax constitutes an environmental tax and follows an environmental objective. The Commission finds that assessment still applicable and thus will in the following recitals assess the German air transport tax as an environmental tax.
- (17) The initial scheme was approved in 2012, where the Community Guidelines on State aid for environmental protection³ ("EAG") were still in force and applicable. Therefore, in the 2012 Decision, the Commission assessed the initial scheme in accordance with the criteria set out in Chapter 4 of the EAG. Since 1 July 2014, the new Guidelines on State aid for environmental protection and energy 2014-2020⁴ ("the EEAG") are applicable.
- (18) Therefore, the current assessment on the compatibility of the scheme will be based on the EEAG, namely on Section 3.7. (i.e. aid in the form of reductions in or exemptions from environmental taxes).
- (19) First, the Commission takes note that the general criteria to assess tax reductions of environmental taxes have not been amended under EEAG in comparison to EAG, but remained the same. As the general characteristics of the scheme at stake remain unchanged, the Commission will refer to the information and conclusions set out in the 2012 Decision, in particular recitals (55) to (81).

³ Community guidelines on State aid for environmental protection, OJ C 82, 1.4.2008, p. 1.

⁴ Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1.

- (20) As the taxation of flights has not been harmonised at EU-level, the Commission has analysed the scheme at stake in accordance with points 176 to 183 EEAG, which constitute the legal basis to assess non-harmonised environmental taxes in addition to the general criteria set out in points 167 to 171 EEAG.

3.2.1. Environmental benefit

- (21) According to point 168 EEAG, reductions on environmental taxes should at least indirectly contribute to a higher level of environmental protection, whereas the overall objective of the environmental tax to discourage environmentally harmful behaviour should not be undermined.
- (22) As described in recitals (55) to (58) of the 2012 Decision, the scheme at stake fulfils the said criteria, as the reduction from the air transport tax makes it feasible to adopt a higher tax rate relating to other types of passengers, thus resulting in an overall improvement of cost internalisation and to create further incentives to improve on environmental protection. In line with point 170 EEAG the tax reduction does not undermine the general objective pursued by the tax. As described in recital 56 of the 2012 Decision, the reduction at stake enabled Germany to implement the air transport tax overall, as without the said reduction it would have been impossible to reach majority in the Parliament. The possibility to grant tax reductions for the transport of passengers other than people domiciled on such islands, i.e. tourists, business people, service providers and workers, was of particular importance for the acceptability of the air transport tax. The said types of passengers are of vital importance for the participation of the concerned islands in the economic life. In conclusion, the air transport tax would not have been implemented without the reduction of rates for certain passengers, therefore the tax reduction contributes indirectly to environmental protection.
- (23) Furthermore, the tax is well-targeted to those being mostly affected by a higher tax. The tax is still partially applicable (i.e. although there is an 80% reduction, tax subjects are still obliged to pay the tax in an amount of 20%). Due to the small size of the relevant islands, the exempted flights constitute a very small portion of all flights subject to the tax in Germany. Additionally, in case of specific weather conditions (such as low tide or severe conditions during winter months) passengers flying to or from the relevant islands do not have other, more environmentally friendly alternatives to travel. Therefore, all those modes that are encouraged to be used through higher taxation for the air transport are not available and hence there is a certain need for flights to and from the relevant islands.

3.2.2. Scope of the tax reduction and necessary market information

- (24) According to point 176 EEAG, in order to demonstrate the necessity and proportionality of the aid, a Member State should clearly define the scope of the tax reduction and provide information specified in point 171 EEAG.
- (25) As set out in recitals (19) to (29) of the 2012 Decision, Germany has provided the information on the overall market situation in the concerned area. Furthermore, as brought out in recitals (6) to (15) of the 2012 Decision, the scope of the tax reduction is well defined. Therefore, Germany has fulfilled its obligation under point 176 EEAG and in the following paragraphs.

3.2.3. *Necessity of the aid*

- (26) According to point 177 EEAG which contains the same wording as point 158 EAG which constituted the basis for assessing necessity under the 2012 Decision, the Commission will consider aid to be necessary if the following cumulative conditions are met:
- a) the choice of beneficiaries is based on objective and transparent criteria, and the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation;
 - b) the environmental tax without the reduction leads to a substantial increase in production costs calculated as a proportion of the gross value added for each sector or category of individual beneficiaries; and
 - c) the substantial increase in production costs could not be passed on to customers without leading to significant sales reductions.
- (27) First, as brought out in recital (61) of the 2012 Decision, the choice of beneficiaries is based on objective and transparent criteria and is non-discriminatory. Thus, point 177(a) EEAG is fulfilled.
- (28) Second, as brought out in recitals (63) to (67) of the 2012 Decision, the tax without reduction leads to a substantial increase in production costs for each sector and category of individual beneficiaries. Thus, point 177(b) EEAG is fulfilled.
- (29) Third, as brought out in recitals (69) to (77) of the 2012 Decision, the abovementioned substantial increase in production costs cannot be passed on to customers without leading to important sales reductions. Thus, point 177(c) EEAG is fulfilled.
- (30) In conclusion, the aid can be considered necessary under point 177 EEAG, as it fulfils all the cumulative criteria set out in the said provision.

3.2.4. *Proportionality of the aid*

- (31) According to point 178 EEAG, the Commission will consider aid to be proportionate if at least one of the conditions set out in point 178 EEAG is fulfilled. One of the conditions listed is that aid beneficiaries pay at least 20% of the national environmental tax.
- (32) As brought out in recital (79) of the 2012 Decision, Germany has applied and will apply after the increase of budget a 20% tax rate to the flights falling under the scope of the present scheme. Thus, one condition set out in point 178(a) EEAG is fulfilled.
- (33) In conclusion, the aid is considered proportionate under point 178 EEAG.

3.2.5. *Conclusion*

- (34) On that basis, the Commission finds that Germany has demonstrated that the budget increase for the tax reduction for passengers (who are not already

exempted from the air transport tax) whose flight is scheduled on the one hand to or from a German, Dutch or Danish island of the North Sea that is not served by a rail or road connection that is independent of the tide and on the other hand from or to the mainland situated within 100 kilometres of the coast line is in line with the Section 3.7.1. of the EEAG. The Commission therefore concludes the budget increase to be considered compatible with the internal market on the basis of Article 107(3)(c) of the TFEU.

4. CONCLUSION

- (35) The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (36) 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/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President