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**Subject: State Aid SA.55903 (2019/N) – Germany – Budget increase in relation to the exemption from air transport tax as regards flights of people domiciled on islands and other cases**

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”).
- (2) The initial scheme was first approved by the Commission in 2011 (“2011 Decision”)<sup>1</sup>. It allows for an exemption from the air transport tax implemented by Germany concerning flights of people domiciled on islands and other cases. In 2013, the Commission approved an increase of the annual budget of the initial scheme from EUR 120,000 to EUR 200,000 (“2013 Decision”)<sup>2</sup>. In 2015, the initial scheme was prolonged until 31 December 2021 (“2015 Decision”)<sup>3</sup>.

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- 1 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.
  - 2 Commission Decision of 31.05.2013 in State aid SA.36554, Increase in the budget in relation to the exemption from air transport tax as regards flights of people domiciled on islands and other cases, OJ C 183 of 28.06.2013, p. 3.
  - 3 Commission Decision of 03.12.2015 in State aid SA.42392, Prolongation of the exemption from air transport tax as regards flights of people domiciled on islands and other cases, OJ C 25 of 22.01.2016, p. 4.

Herrn Heiko MAAS  
Bundesminister des Auswärtigen  
Werderscher Markt 1  
D-10117 Berlin

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Objective of the aid measure**

- (3) The objective of the initial scheme is to improve connectivity between the islands and the mainland by relieving persons domiciled on domestic islands from the air transport tax.
- (4) A detailed description of the scheme's objective is set out in recital (6) of the 2011 Decision.

### **2.2. Background**

- (5) 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 exemption covers departures from and to German islands for in particular passengers domiciled on such island, if the island is only accessible by sea, provided the destination or point of departure is not more than 100 km from the coast.
- (6) A detailed description of the initial scheme is set out in recitals (2), (3) and (5) to (8) of the 2011 Decision.
- (7) Based on recital (1) of the 2013 Decision and recital (6) of the 2015 Decision the current budget of the scheme is EUR 200,000.

### **2.3. Legal basis**

- (8) The national legal basis for the scheme is the Air Traffic Tax Act (*Luftverkehrsteuergesetz*). 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**

- (9) The main features of the initial scheme and its objective remain unaltered. The modifications to the scheme under the present notification remain limited to an increase of budget.
- (10) 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. A 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.

- (11) Such increase of the tax amount will lead to the increase of the aid amount under the tax exemption and thus increase the budget of the scheme.
- (12) According to Germany, taking into account the relevant number of passengers from 2018, the current budget of the scheme will be exceeded by 10% 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 approximately 20% based on 2018 passenger numbers, and by 40% in case of a 5% passenger number increase.
- (13) Therefore, Germany is planning to increase the annual budget of the current scheme from EUR 200,000 to EUR 350,000 for the remaining duration of the scheme, i.e. until 31 December 2021.

### **3. ASSESSMENT OF THE MEASURE**

#### **3.1. Existence of aid**

- (14) The Commission notes that all of the elements in the scheme remain unchanged to the 2011 and the 2013 and 2015 Decisions<sup>4</sup>, except for the increase of budget.
- (15) In the 2011 Decision, the Commission concluded that the measure constitutes State aid within the meaning of Article 107(1) TFEU<sup>5</sup>. The amendments to the initial scheme do not alter the Commission's previous assessment.

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

- (16) In both the 2011 and 2013 Decisions<sup>6</sup>, the Commission concluded that the scheme at stake involves "aid of a social character" in line with the 1994 Aviation Guidelines<sup>7</sup>. Likewise, the Commission concluded in its 2015 Decision that the scheme is in line with the provisions on aid of a social character as set out in the then applicable legal basis, the 2014 Guidelines<sup>8</sup>. Consequently, the Commission concluded that the scheme is in line with Article 107(2)(a) TFEU, which provides that "aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned" shall be compatible with the internal market.
- (17) The Commission notes that apart from the budget increase the features of the initial scheme remain the same under the present notification.

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4 See recitals (9) to (13) of the 2011 Decision, recital (3) of the 2013 Decision and recitals (7) to (14) of the 2015 Decision.

5 See recitals (9) to (13).

6 See recitals (14) to (20) of the 2011 Decision and recitals (4) to (6) of the 2013 Decision.

7 Communication 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 of 10 December 1994, p. 5.

8 See recitals (15) to (22) of the 2015 Decision.

- (18) Point 156 of the 2014 Aviation Guidelines<sup>9</sup> provides that aid of a social character in air transport services will be held compatible with the internal market pursuant to Article 107(2)(a) TFEU, if the following cumulative conditions are met:
- the aid must effectively be for the benefit of the final consumers;
  - the aid must have a social character, that is it must in principle cover certain categories of passengers travelling on a route, or, in case of a remote region, such as an island, it could also cover the entire population of such remote region;
  - the aid must be granted without discrimination as to origin of services, meaning irrespective of the airline which is operating the services.
- (19) The scheme at stake will effectively benefit the final consumer, as the eligible passengers are relieved from the payment of the relevant air transport tax<sup>10</sup>.
- (20) Furthermore, the scheme does possess a social character as it covers the entire population of the islands to ensure the connectivity of the population with the mainland, also including medical flights and persons acting under public policy remit<sup>11</sup>.
- (21) Last, the aid is granted without discrimination, as it is open to all EEA air carriers providing air services on all or part of the eligible routes and covers flights between the eligible island and all eligible EEA destinations<sup>12</sup>.
- (22) The Commission therefore concludes that the amended scheme fulfils the criteria of section 6 of the 2014 Aviation Guidelines as aid of a social character and is thus compatible with the internal market.

#### **4. CONCLUSION**

- (23) 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(2)(a) TFEU.

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9 Communication from the Commission - Guidelines on State aid to airports and airlines, OJ C 99 of 4 April 2014, p. 3.

10 See recital (11) of the 2011 Decision.

11 See recitals (17) to (19) of the 2011 Decision.

12 See recital (20) of the 2011 Decision.

- (24) 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:

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Directorate-General Competition  
State Aid Greffe  
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[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President