EUROPEAN COMMISSION

Brussels, 10.6.2020
C(2020) 3989 final

In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]		PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid SA.57369 (2020/N) COVID 19 – Portugal Aid to TAP

Dear Sir,

The European Commission ("the Commission") wishes to inform the Portuguese Republic that, having examined the information supplied by your authorities on the State aid referred to above, it has decided not to raise any objections, as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

S. Ex.ª o Ministro dos Negócios Estrangeiros
Augusto Santos Silva
Largo do Rilvas
P – 1399-030 – Lisboa

1. PROCEDURE

(1) Following pre-notification contacts that started on 15 May 2020[1], on 9 June 2020, Portugal notified to the Commission its plans to grant rescue aid in favour of Transportes Aéreos Portugueses SGPS S.A. ("TAP SGPS" or "the beneficiary").

(2) The Portuguese authorities agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958[2] and to have the decision adopted and notified pursuant to Article 297 TFEU in English.

2. DESCRIPTION

2.1. The beneficiary

(3) TAP SGPS is the holding company of the TAP Group, and it is the sole shareholder of Transportes Aéreos Portugueses, S.A. ("TAP Air Portugal"). TAP Air Portugal was created in 1945 as the Portuguese flagship airline. TAP SGPS was incorporated in 2003. Participações Públicas, SGPS, S.A. ("Parpública"), a public undertaking managing the holdings of the Portuguese State, holds 50% of the shares of the beneficiary, Atlantic Gateway SGPS LDA ("AGW") holds 45% and other shareholders (5%) hold the remainder.

(4) The beneficiary holds full control of TAP Air Portugal with 100% of the shares thereof. TAP Air Portugal is in turn the sole shareholder of TAP Logistics Solutions, S.A., a company incorporated on 30 December 2019, to operate in cargo and mail activities. TAP SGPS owns stakes in the following companies that are active in the provision of air transport-related services in Portugal and other countries:

- 100% in Portugália Airlines– Companhia Portuguesa de Transportes Aéreos, S.A. ("PGA");
- 100% in U.C.S.– Cuidados Integrados de Saúde, S.A., a company active in healthcare services, whose main client is also TAP Air Portugal;
- 100% in TAPGER Sociedade de Gestão e Serviços, S.A. and 99,83% in Aeropar Participações, Lda ("Aeropar"), both acting as holding companies;
- 78,72% in TAP Manutenção e Engenharia Brasil, S.A, active in aircraft maintenance for the TAP Group and for third parties;
- 43,9% in SPdH–Serviços Portugueses de Handling, S.A., a company operating in the airport handling sector in Portugal.
- 51% in CATERINGPOR– Catering de Portugal, S.A., active in the provision of catering for aviation, whose main client is TAP Air Portugal.

[1] The contacts involved, until the formal notification, various technical discussions in videoconferences, draft submissions and analyses of financial and business data in connection with different legal bases potentially applicable to Portugal's pre-notified plans to grant State aid.

[2] Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385, p. 58).

(5) TAP Air Portugal, the fully-owned subsidiary of the beneficiary, operates a fleet of 105 aircraft (including aircraft operated under wet-lease agreements), and in 2019 served 95 destinations in 38 countries, carried over 17 million passengers and operated over […] flights. Those flights were on routes from airports such as Lisbon (main hub, with […] market share by capacity) or Porto and four islands in the Azores and Madeira to various international destinations, including 49 airports in Europe (outside Portugal), 10 destinations in Brazil, 17 in Africa and 8 in North America[3].

(6) Other airlines licensed in other Member States provide air passenger transport or cargo services to Portugal, such as Lufthansa, Air France-KLM, Finnair, Brussels Airlines, Austrian Airlines, Vueling and Iberia (IAG).

2.2. Financial situation of the beneficiary and effects of public measures

(7) The Portuguese authorities state that TAP SGPS has structured most of the group's debt issuances through […]. Pursuant to the most recent certified accounts of TAP SGPS and TAP Air Portugal, which refer to the year 2019, the retained earnings and net income amounts show that TAP SGPS presented a negative total equity amount of c.a. […].

(8) According to public market information, shortly before the closing of the annual audited accounts of the beneficiary, on 2 December 2019, TAP Air Portugal closed an offering of EUR 375 million senior unsecured bonds with five-year maturity serving regular annual coupons of 5.625% and effective interest of 5.75%[4]. The issuance was aimed at meeting general corporate expenditure and at partly repaying debt and extending its average maturity. The issuance attracted preliminary ratings of BB- (Standard & Poors) and B2 (Moody's), that is, below "investment grade" rating. A few months before, on 24 June 2019, TAP Air Portugal had issued EUR 50 million of bonds with four-year maturity serving regular annual coupons of 4.375%[5]. Whilst the amounts and conditions of the two issuances in June and December 2019 differ, the interest shown in those issuances indicate the conditions on which the beneficiary could access finance on the market before the COVID-19 outbreak.

(9) On 20 March 2020, after the last issuances of bonds, in light of the unprecedented government travel restrictions and quarantine orders due to the COVID-19 outbreak, the rating agency Standard & Poors lowered ratings for eight European airlines and stated it could lower them further. That agency assigned TAP Air

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[3] Public disclosure (press release): "Corporate Presentation" by Transportes Aéreos Portugueses, S.A on 18.11.2019, pursuant to Regulation (EU) 596/2014 of 16 April 2014.

[4] Statement: "TAP Announces the pricing of EUR 375 million 5.625% senior notes due 2024" on 22.11.2019. Demand from investors allowed the issuance to eventually raise more money (EUR 75 million over EUR 300 initial) and with lower pricing (20 bp) than initially envisaged.

[5] Reference ISIN PTTAPBOM0007, TAP-SGPS 19/23.

Portugal S.A. a B— long-term rating and an outlook on short-term liquidity rating of ccc+. In the same announcement, Standard & Poors assigned recovery prospects of 45% to the EUR 375 million bonds issue. On 19 March 2020, the rating agency Moody's had also downgraded the probability of default and corporate ratings of TAP Air Portugal to Caa1-PD and Caa1 respectively. On 28 May 2020, the annual yield to maturity (December 2024) of the EUR 375 million senior notes issued in December 2019 was […]% on the secondary market. In other words, at that stage buyers of those bonds issued by TAP Air Portugal required a discount on the nominal value of the security so as to obtain a return of […]% to accept holding them to maturity. […].

(10) The public policy measures or recommendations taken on health grounds as from the first months of 2020 to address the COVID-19 outbreak in Portugal or other countries caused numerous flight cancellations and route suspensions.[6] Faced with that unprecedented situation, on 19 March 2020 TAP Air Portugal announced a significant reduction of its flight operations[7]. After that date, flights were only occasional, organised in liaison with the Ministry of Foreign Affairs to repatriate individuals in, among others, Cape Verde, Angola, Sao Tomé, Guinea, Mozambique, or to transport medical and humanitarian cargo. At present the beneficiary plans a progressive ramp-up of its operations, taking into account the remaining public restrictions in its area of operations.

2.3. Impact of public measures on operating results and liquidity prospects

(11) Like most air carriers around the globe, TAP Air Portugal currently faces the impacts of the legal and regulatory restrictions imposed on companies and individuals, either globally, nationally or specifically within the aviation sector. TAP Air Portugal had, as of 31 May 2020, an amount of approximately […] of tickets issued and not flown (passengers that have a flight booked or a voucher to book a flight).

(12) That situation of nearly complete discontinuance of operations has also worsened the beneficiary's operating results and liquidity position in 2020. […]. Based on a planned progressive ramp-up of activity beginning in July, and despite the measures taken to reduce or delay costs, the cumulated losses of TAP Air Portugal are at present expected to reach […] by 31 December 2020.

(13) The situation resulting from policy measures or recommendations taken on health grounds as from the first months of 2020 has already had an immediate impact on the cash balance of the beneficiary. The liquidity plan drawn up by the Portuguese authorities shows a shortfall of EUR 1.2 billion in the next six months until

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[6] In Portugal a state of emergency was adopted under Decree no. 14-A/2020 of 18 March, having effect as of 19 March, and was extended twice until 2 May, by Decrees no. 17-A/2020 and 20-A/2020, being then succeeded by the statement of state of calamity, which was in force until 31 May. The state of emergency was regulated by the Portuguese Government, under Decrees no. 2-A/2020, 2-B/2020 and 2-C/2020.

[7] TAP temporarily reduces its operations. Press release 19 March 2020, https://www.tapairportugal.com/en/media/press-releases/Press-Release-841 .

December 2020. Those projections were made in the context of current uncertainty about future projections of the airline business. The cash forecasts are built on the expected operating revenues and costs, including […].

2.4. Description of the notified rescue instrument

(14) The planned measure is based on the Portuguese Budget Law for 2020 and will take the form of a rescue loan, or of a combination of loan and loan guarantees, up to a maximum of EUR 1.2 billion granted by the Portuguese Republic to TAP Group, in order to address immediate liquidity needs considering an amount equivalent to the liquidity needs for a 6-month period from July 2020 to December 2020[8]. The loan agreement will be entered by and between Portugal, as Lender, TAP Air Portugal as Borrower, TAP SGPS, as Guarantor, and PGA, as sister company of TAP Air Portugal. AGW and Parpública may also be part of the loan agreement, both in the capacity of shareholders of TAP SGPS.

(15) The first instalment will be granted via a loan, while the remaining instalments may be granted via loan and/or loan guarantee (under the same conditions). The loan agreement to be entered, among others, between Portugal and TAP Air Portugal will contain several provisions regarding the […].

(16) The rescue loan will be repaid within six months of the date of disbursement of the first instalment, unless Portugal has submitted a restructuring plan for approval by the Commission before that date. In that latter case, the repayment period is automatically extended up until the Commission takes a final decision on the restructuring plan. […].

(17) […]. In case some instalments are granted in the form of a State guarantee, the overall interest rate resulting from the underlying loan and the guarantee premium will not be lower than the loan option.

(18) Whilst Portugal has expressed a preference for presenting to the Commission a restructuring plan not later than six months after the rescue aid loan has been authorised, Portugal has also committed to communicate proof within that same six-month period that the rescue loan has been repaid or to communicate within that period a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid.

(19) Finally, the Portuguese authorities confirmed that the beneficiary has received no rescue or restructuring aid in the past ten years.

2.5. Counterfactual to the measure

(20) The Portuguese authorities explained that TAP Group’s liquidity situation and financing needs derive from the almost complete suspension of the operation of TAP Air Portugal due to the COVID-19 outbreak and is not the result of an

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[8] Article 154 of the State Budget Law for 2020, empowers the Minister of Finance to authorize loans and other active credit operations up to an amount of EUR 4.7 billion.

arbitrary allocation of costs within the group.

(21) Portugal claims that the beneficiary would fail to meet immediate and significant payments falling due in the absence of the rescue loan. In that respect, the Portuguese authorities also indicate a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor to step in quickly. TAP Air Portugal is also responsible for providing important links between the country's largest cities as a key provider of services in the mobility of people and cargo, both in the mainland and the Autonomous Regions of Madeira and Azores, as well as with Portuguese-speaking countries and diaspora.

(22) The Portuguese authorities also explain that TAP Air Portugal has an important systemic role for the whole of the Portuguese territory and its exit would have severe negative consequences in Portugal. The company supports the growth of Portuguese tourism, one of the Member State's most important sectors, which accounted for 14.6% of Portugal's GDP in 2018. That sector was of paramount importance for the Portuguese economic recovery from the financial and sovereign debt crisis.

(23) An important segment of Portuguese companies - namely hotels, restaurants, social and cultural events, retail shops and other tourism-related activities (especially concentrated in the largest regions of Lisbon and Porto and in Algarve) - would have further difficulties surviving the crisis without support from the operations of TAP Air Portugal in bringing tourists. Most of those companies that may survive COVID-19 crisis only due to support of the Portuguese government through temporary subsidized work and measures which allow them to defer due payments, need tourism to ramp up.

3. ASSESSMENT OF THE MEASURE

(24) The Commission first assesses whether the rescue loan under scrutiny entails State aid to the beneficiary under Article 107(1) TFEU, and then whether such aid is lawful and compatible with the internal market.

3.1. Existence of State aid

(25) According to Article 107(1) TFEU, "[s]ave as otherwise provided in the Treaties, 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".

(26) The qualification of a measure as aid within the meaning of that provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

(27) Prior to examining whether the rescue loan involves State aid pursuant to Article 107(1) TFEU, the Commission notes that Portugal has notified it as constituting

State aid. That declaration does not discharge the Commission from examining itself whether the notified rescue loan involves State aid and, in particular, whether it favours the beneficiary in that a market operator holding shares in a situation as close as possible to that of Portugal would not take a similar decision and grant the same loan at the same conditions, leaving aside any benefits expected in its situation as public authority[9].

(28) The rescue loan is to be granted by Portugal with resources from its budget. Therefore, the rescue loan is a measure taken by the Portuguese State and it involves State resources.

(29) In respect of the notified rescue, the immediate situation of the beneficiary since March 2020 and its prospects of operating results mean that it could not obtain from financial institutions the amount of the loan, at the same conditions. Indeed, the beneficiary had access to financial markets and obtained finance in December 2019 at conditions that were more expensive than the planned loan, albeit for longer maturities and lower amounts (see recital (8)).

(30) Moreover, since December 2019, the effect of the public measures affecting air traffic in connection with the COVID-19 outbreak have worsened the beneficiary's financial situation and prospects, as evidenced by the current and expected operating results until December 2020 (see recital (12)). The remuneration at which market investors are now willing to purchase in the secondary market securities issued by the beneficiary is also evidence that market conditions for the beneficiary to obtain finance have also worsened and are now tighter than in December 2019 (see recital (9)). […]. Thus, the interest rate is not in line with market conditions.

(31) The conclusion that the loan provides an advantage to the beneficiary in comparison with the treatment it would receive under market conditions is not contradicted by the assessment of whether a market operator in a situation as close as possible to that of the Portuguese State, alone or through Parpública (the holder of the State's shareholding in the beneficiary), would take a similar decision and grant the same loan at the same conditions. First, there is no prima facie evidence that the grant of the rescue loan can be ascribed to behaviour and decisions which a market shareholder would follow. In that regard, for the assessment of the rescue loan, the Portuguese authorities only put forward reasons which would be irrelevant for a market shareholder. Second, the Portuguese authorities do not assess the grant of the loan as being necessary to preserve or increase the value of and/or return from their holding in the beneficiary, based on a financial assessment of the expected returns thereof. […]. This provides another indication that the Portuguese State is not providing finance in expectation of sufficient returns from or preservation of the value of Parpública's holding in the beneficiary in the present market circumstances, […]. Therefore, the rescue loan would not be provided by a market operator in a situation as close as possible to that of the Portuguese State and thus provides an economic advantage to the beneficiary.

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[9] Case C-300/16 P *Commission* v *Frucona Košice*, EU:C:2017:706, paragraph 59; and Case C-124/10 P *Commission* v *EDF*, EU:C:2012:318, paragraphs 78, 79 and 103.

(32) Therefore, the EUR 1.2 billion rescue loan provides funding at a lower cost than the beneficiary can or could obtain on the market, thereby providing it with an economic advantage.

(33) The rescue loan is to be granted through the exercise of discretion in favour of the beneficiary for an ad hoc amount determined by reference to its specific liquidity needs. The loan is not part of a broader, general, economic policy measure to provide support to undertakings active in the air transport or other economic sectors, in a comparable legal and economic situation. As the Court has stated, where individual aid is at issue, the identification of the economic advantage is, in principle, sufficient to support the presumption that a measure is selective.[10] This is so regardless of whether there are operators on the relevant markets that are in a comparable factual and legal situation. Therefore, the Commission concludes that this loan is selective within the meaning of Article 107(1) TFEU.

(34) The air passenger transport and cargo services sector in which the beneficiary is active is open to competition and trade between Member States. Many other undertakings such as Air-France-KLM, Iberia or Lufthansa among others provide such services in Portugal and throughout the Union. Likewise, the beneficiary provides air passenger transport and cargo services in Portugal and in the other Member States where it operates flights. Therefore, the aid is liable to affect trade between Member States.

(35) By granting access to funding at conditions which it would not otherwise obtain on the market, the rescue loan is liable to improve the position of the beneficiary in relation to other competing undertakings active within the internal market that have not had access to similar State support and/or that have to finance their operations at market conditions. The rescue loan consequently distorts or threatens to distort competition and affect trade between Member States.

3.2. Conclusion on the existence of aid

(36) In light of the above, the Commission concludes that the rescue loan in favour of TAP involves State aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market.

3.3. Lawfulness of the aid

(37) The notified rescue loan has not yet been granted to the beneficiary and Portugal has thus observed the stand-still obligation laid down in Article 108(3) TFEU. Therefore, the rescue loan does not constitute unlawful State aid.

3.4. Compatibility of the aid

(38) Under Article 107(3)(c) TFEU, the Commission can authorise aid if it is granted to promote the development of certain economic sectors and if that aid does not adversely affect trading conditions to an extent contrary to the common interest. In view of the nature and aims of the State aid at stake and the claims of the

[10] See judgment of 4 June 2015 *Commission* v *MOL*, Case C-15/14 P, EU:C:2015:362, paragraph 60.

Portuguese authorities in the notification, the Commission will assess whether the rescue loan complies with the provisions on rescue aid laid down in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ("R&R Guidelines").[11]

(39) Rescue aid is by nature urgent and temporary assistance for the short time needed to work out a restructuring plan after analysing the circumstances which gave rise to the difficulties and develop an appropriate plan to remedy those difficulties (R&R Guidelines, point 26). The notified rescue aid adheres to that general principle as it arises in a situation of particular urgency in the airline sector that affects the beneficiary's ability to meet its payment and financial obligations.

3.4.1. Eligibility

(40) In order to be eligible for rescue aid, an undertaking must qualify as an undertaking in difficulty for the purposes of section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines explains that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in letters a) to d) of point 20 of the R&R Guidelines occurs.

(41) As explained in recital (21), […], which shows that at least half of its subscribed share capital has disappeared. The beneficiary thus qualifies as an undertaking in difficulty pursuant to point 20(a) of the R&R Guidelines.

(42) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid. The beneficiary is not a newly created undertaking for the purposes of the R&R Guidelines since it was established more than three years ago (see recital (3)).

(43) According to point 22 of the R&R Guidelines, a company belonging to or being taken over by a larger business group is not normally eligible for rescue aid, except where it can be demonstrated that the company's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. Although the beneficiary is controlled by other shareholders (recital (3)), the difficulties it faces are intrinsic, are too serious to be dealt with by its controlling or other shareholders and are not the result of an arbitrary allocation of costs to the benefit of its shareholders or other subsidiaries, as illustrated in recitals (7) to (9). In the case of TAP SGPS, it is apparent that the difficulties at issue have been aggravated by the unprecedented public measures taken by Portugal and other countries with respect to air transport (see recitals (11) to (13)).

3.4.2. Contribution to an objective of common interest

(44) Under point 38(a) of the R&R Guidelines, in assessing whether the rescue aid can

[11] Communication from the Commission - Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

be declared compatible with the internal market, the Commission examines whether the State aid contributes to a well-defined objective of common interest in accordance with Article 107(3) TFEU. In that respect, the Member State must demonstrate that the aid aims to prevent social hardship or address a market failure. Under point 44 of the R&R Guidelines, this can be demonstrated in particular by showing that one of the circumstances listed from letter a) to g) are met.

(45) In that regard, the Portuguese authorities refer to circumstances mentioned under point 44(b) and (c) of the R&R Guidelines (see recitals (21) to (23)).

(46) […].

(47) In the present circumstances triggered by the COVID-19 outbreak, it would be difficult for any competitor (including those already active on the Portuguese market) to step in and fully or significantly replicate the role of TAP Air Portugal, without risking a significant discontinuation of connectivity on the routes from and to Portugal which TAP Air Portugal serves. In that respect, the Commission has considered in several occasions that rescue aid to airlines of a particular size[12] or whose operations extend to most commercial airports in one Member State[13] contribute to an objective of common interest. In the same vein, it appears that a discontinuation of activities would have significant negative spill-over effects on important segments of the Portuguese economy concerning tourism-related activities. Hence, the information provided by the Portuguese authorities demonstrates that the rescue aid contributes to a well-defined objective of common interest.

(48) The Commission concludes that the information provided by the Portuguese authorities demonstrates that, […], the rescue aid contributes to a well-defined objective of common interest as provided by point 44(b) and (c) of the R&R Guidelines.

3.4.3. Appropriateness

(49) Under point 38(c) of the R&R Guidelines, the Commission will not consider an aid measure to be compatible with the internal market if other, less distortive, measures allow the same objective to be achieved. In that respect, rescue aid must fulfil the conditions laid down in point 55 from letter a) to e) and point 56 of the R&R Guidelines.

(50) As to letters a) and d) of point 55 of the R&R Guidelines, the Commission notes

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[12] Commission Decision of 4.9.2017 in case SA.48937 – Rescue aid in favour of Air Berlin, OJ C 400 of 24.11.2017, recitals (82-83) and Commission Decision of 14.10.2019 in case SA.55 394 – Rescue aid to Condor, recitals (81-97), not yet published in the OJ, available at https://ec.europa.eu/competition/state_aid/cases1/202011/282378_2139096_196_2.pdf

[13] Commission Decision of 24.2.2020 in case SA.56 244 – Rescue aid to Tarom, not yet published in the OJ, available at https://ec.europa.eu/competition/elojade/isef/index.cfm?fuseaction=dsp_result&policy_area_id=3

that the rescue loan, covering net cash flow needs up to EUR 1.2 billion is temporary in nature […]. The Portuguese authorities committed to communicating to the Commission, no later than six months after the rescue aid measure has been authorised, a restructuring plan or, in any event, proof that that the rescue loan has been repaid or a liquidation plan has been adopted (see recital (18)).

(51) […]. Accordingly, the interest rate is at least equal to the reference rate set out in the Reference Rate Communication for weak undertakings offering normal levels of collateralisation, which is currently 1-year IBOR plus 400 basis points[14] (see recital (17)), which is in line with requirements of points 55(b) and 56 of the R&R Guidelines.

(52) The Commission notes the declaration by the Portuguese authorities that the loan will be used only to meet the identified urgent liquidity needs of the beneficiary, and in particular will cover normal operating costs (see recital (14)). Accordingly, the beneficiary will not use the rescue aid to finance structural measures or other activities than its current operations (point 55(e) of the R&R Guidelines).

(53) In view of the information provided by the Portuguese authorities, the Commission concludes that the rescue loan meets the conditions laid down in points 38(c) and 55 of the R&R Guidelines and therefore the form of the aid allows the rescue of the beneficiary in the least distortive way.

3.4.4. Proportionality of the aid / aid limited to the minimum

(54) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. As specified in point 60 of the R&R Guidelines, rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. In determining that amount, the Commission takes into account the outcome of the calculation under the formula set out in Annex I to the R&R Guidelines. The Commission will authorize any aid exceeding the result of that calculation only if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months.

(55) The EUR 1.2 billion amount of the loan required by Portugal to be approved as rescue aid […]. Therefore, in line with point 60 of the R&R Guidelines, the Portuguese authorities provided a liquidity plan setting out the beneficiary’s liquidity needs for the coming six months, from June 2020 to December 2020.

(56) The Commission has reviewed the liquidity plan and found that it reasonably reflects the liquidity needs of the beneficiary, to the extent they can be reasonably and prudently anticipated in the business and financial environment into which the beneficiary will be operating until December 2020. In particular, it includes […]. The liquidity plan does not include uncommon or illegitimate expenses, such as e.g. financing of structural measures or expansion of operations beyond earlier

[14] Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p. 6

commitments. The aid does therefore not exceed the necessary minimum to keep the beneficiary in business for the coming six months with a view to providing assistance for the time needed to analyse the circumstances which gave rise to the difficulties and to devise a restructuring plan to address them (see also point 26 of the R&R Guidelines).

(57) The Commission therefore concludes that the notified rescue aid is restricted to a minimum amount, in line with point 60 of the R&R Guidelines and is consequently proportional.

3.4.5. Negative effects

(58) Under point 38(f) of the R&R Guidelines, the negative effects of the aid on competition and trade between Member States must be sufficiently limited, so that the overall balance of the measure is positive. In the case of rescue aid, the Commission considers that this condition is met when recipients of aid under those R&R Guidelines are not in recurrent difficulties over time that were not properly addressed with rescue or restructuring aid granted earlier or are still recipients of previous unlawful aid which the Commission has declared to be incompatible with the internal market and ordered recovery thereof.

(59) In that respect, under points 70 and 71 of the R&R Guidelines, aid can be granted to undertakings in difficulty in respect of only one rescue or restructuring operation. Therefore, where less than 10 years have elapsed since rescue aid, restructuring aid or temporary restructuring support were granted to the beneficiary in the past, including any such aid granted before the entry into force of the R&R Guidelines and any non-notified aid, the Commission will not allow further aid (the 'one time, last time' principle).

(60) The Portuguese authorities confirmed in the notification that the beneficiary has not benefited from any rescue aid, restructuring aid or temporary restructuring support in the past 10 years. Therefore, the 'one time, last time' principle is respected.

(61) Likewise, the Portuguese authorities informed in the notification that TAP SGPS has not benefited from earlier unlawful aid declared incompatible by a Commission decision, which is in line with requirements of point 94 of the R&R Guidelines.

3.4.6. Transparency

(62) According to point 38(g) of the R&R Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that Portugal must respect the provisions on transparency laid down in point 96 of the R&R Guidelines. The Commission notes that Portugal undertakes to respect those obligations. The relevant information will be made available on the website:

https://www.portaldiplomatico.mne.gov.pt/sobre-nos/gestao-e-transparencia/documentos-legais

3.5. Conclusion on the compatibility of the aid

(63) In the light of the findings above, the Commission concludes that the rescue loan meets the conditions of compatibility with the internal market set out in the R&R Guidelines. The Commission therefore considers that the rescue aid provided to the beneficiary is compatible with the internal market.

(64) In addition, the Commission reminds Portugal of its obligation to submit annual reports to the Commission, in accordance with point 131 of the R&R Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified individual aid to Transportes Aéreos Portugueses SGPS S.A. on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of 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:

https://ec.europa.eu/competition/elojade/isef/index.cfm .

Your request should be sent electronically to the following address:
European Commission,
Directorate-General
Competition State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

For the Commission

Margrethe VESTAGER
Executive Vice-President

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Jordi AYET PUIGARNAU
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