



## EUROPEAN COMMISSION

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### PUBLIC VERSION

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**Subject: State Aid SA.57644 (2020/N) – Germany - COVID-19: Airport Scheme**

Excellency,

### 1. PROCEDURE

- (1) On 10 June 2020, Germany pre-notified to the Commission an aid scheme for operators of German airports related to the COVID-19 pandemic (“the scheme”). During the pre-notification phase, several telephone conferences between the German authorities and the Commission services took place. On 22 and 28 May, 8 and 13 June, and 27 July 2020, the German authorities submitted additional information.
- (2) By electronic notification of 4 August 2020, Germany notified the scheme in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”) as containing an aid measure compatible with the internal market under Article 107(2)(b) and other aid measures compatible under Article 107(3)(b) TFEU in light of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).<sup>1</sup>

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<sup>1</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3 and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

Seiner Exzellenz Herrn Heiko MAAS  
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- (3) Germany exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958<sup>2</sup> and accepts to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE SCHEME**

### **2.1. The COVID-19 outbreak in Germany and the containment measures taken by the German authorities**

- (4) The first case of the infectious disease SARS-CoV-2 (COVID-19) in Germany was confirmed on 28 January 2020. After a stagnation of identified cases, clusters of cases emerged in various places in Germany from mid-February. Since the end of February, the number of cases increased sharply with cases spread across all German *Länder* (federal states).
- (5) As other countries did in response to the COVID-19 outbreak, Germany has taken sequential mitigation measures (“containment measures”) to prevent the spread of COVID-19 in the country.
- (6) On 29 January 2020, Lufthansa stopped all flights to and from China. On 20 February 2020, the independent federal authority for infectious diseases advised against travel in risk areas. From the beginning of March 2020, several countries introduced travel bans for German and other Union citizens, e.g. Israel from 4 March, El Salvador from 8 March, the United States of America and Poland from 13 March 2020.
- (7) On 16 March 2020, the German authorities introduced nationwide contact and movement limitations. On 17 March 2020, the German Federal Government issued a worldwide travel warning requiring citizens to refrain from unnecessary journeys. Other Member States issued similar travel advice. Germany also imposed extensive entry restrictions at its Schengen external borders on 17 March 2020, to further reduce the risks of infection caused by the COVID-19 virus.
- (8) Due to the various restrictive measures taken both at national level in Germany and in other countries in relation to the free movement of people domestically and internationally, the airlines operating at the German airports have gradually reduced their scheduled flights as of the beginning of March 2020 and finally suspended all scheduled flights. As a result of the containment measures, passenger traffic at the German airports dropped by approximately 98% in April 2020 and by around 74% in late June (compared to levels in the corresponding months of 2019). The flight restrictions did not apply to flights performed by State aircraft, freight and mail transport, flights ensuring humanitarian or emergency medical services, as well as non-commercial technical landings.

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<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

- (9) The German travel warning requiring citizens to refrain from unnecessary journeys, as described in recital (7) was withdrawn with effect from 15 June 2020 only for other Member States and some other European countries (such as Iceland, Norway, Switzerland, the UK). However, Germany has maintained it for the rest of the world until at least 31 August 2020 in an effort to contain the coronavirus pandemic.

## **2.2. Objective of the scheme**

- (10) The containment measures set out in section 2.1 have led to a severe deterioration of the economic and financial situation of the operators of German airports, which suffered a drastic reduction of their revenues. The German authorities submit that according to the German Association of German Commercial Airports (“ADV”), German airports have lost on average 95% of their revenues during the COVID-19 pandemic. The operating costs of the 22 international airports in Germany are estimated on average at EUR 170 million per month, while sales lost are estimated at EUR 500 million per month.
- (11) The losses suffered by airport operators in terms of traffic and related revenues have resulted in a lack of liquidity leading in turn to difficulties in paying costs and financial obligations which the companies still have to bear in order to preserve the continuation of their activity.
- (12) The objective of the aid measure under Article 107(2)(b) TFEU is to cover the net losses of the airport operators caused by the suspension of flights as a direct effect of the COVID-19 restrictions. The objective of the measures based on the Temporary Framework is to remedy the difficulties faced by airport operators and to ensure that sufficient liquidity remains available in the market to counter the liquidity shortage faced by them because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine their viability. The German authorities submit that in the absence of the aid, most of the airport operators would likely have to declare insolvency and would probably exit the market.

## **2.3. The nature and form of the aid**

- (13) The German legal basis for the scheme (see recital 15) provides for aid in the form of (i) direct grants under Article 107(2)(b) TFEU as well as (ii) grants, guarantees on loans, subsidised interest rates and deferrals of taxes under the Temporary Framework.
- (14) However, small grants, guarantees on loans and subsidised loans are not part of the assessment in the present decision. The German authorities submit that airport operators are already eligible to receive aid in the form of such instruments under three German schemes approved by the Commission in its decisions of 24 March

2020 for grants under section 3.1 of the Temporary Framework,<sup>3</sup> of 24 March 2020 under its section 3.2<sup>4</sup> and of 2 April under its section 3.3<sup>5</sup>.

## **2.4. Legal basis**

- (15) The legal basis for the scheme is „*Regelung zur vorübergehenden Gewährung von Beihilfen an Flugplätze im Geltungsbereich der Bundesrepublik Deutschland im Zusammenhang mit dem Ausbruch von Covid-19 („Bundesrahmenregelung Beihilfen für Flugplätze“)*“ issued by the Ministry of Transport and Digital Infrastructure.

## **2.5. Budget and duration of the measures**

- (16) The German authorities estimate that the volume of potential compensation payments amounts to approximately EUR 1.36 billion.
- (17) Aid under the scheme may be granted from its approval until 31 December 2020<sup>6</sup>.

## **2.6. Beneficiaries**

- (18) The beneficiaries of the scheme are operators of airports in Germany.
- (19) Aid under the Temporary Framework may not be granted to medium and large enterprises within the meaning of Annex I to the General Block Exemption Regulation (“GBER”)<sup>7</sup> that were already in difficulty within the meaning of the GBER<sup>8</sup> on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, only if those enterprises, at the moment of granting the aid are not subject to

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<sup>3</sup> Commission Decision of 24 March 2020 in case SA.56790 (2020/N) – Germany – *Federal Framework “Small amounts of aid 2020” (“Bundesregelung Kleinbeihilfen 2020”)*, OJ C 312, 3.4.2020, p. 1, as amended by Commission Decision of 11 April 2020 in case SA.56974 (2020/N), OJ C 144, 30.4.2020, p. 1).

<sup>4</sup> Commission Decision of 24 March 2020 in case SA.56787 (2020/N) – Germany - *COVID-19: Bundesregelung Bürgschaften 2020*, OJ C 158, 8.5.2020, p. 1.

<sup>5</sup> Commission Decision of 2 April 2020 in case SA.56863 (2020/N) – Germany COVID-19: *Federal framework for subsidised loans 2020 (“Bundesregelung für niedrigverzinsliche Darlehen 2020”)*, OJ C 144, 30.4.2020, p. 1, as amended by Commission Decision of 11 April 2020 in case SA.56974, OJ C 144, 30.4.2020, p. 1.

<sup>6</sup> The tax liability in relation to which the aid is granted must have arisen no later than 31.12.2020, in line with footnote 17 of the Temporary Framework and may not be granted beyond 31 December 2022.

<sup>7</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

<sup>8</sup> As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1

collective insolvency procedure under national law and they have not received rescue aid<sup>9</sup> or restructuring aid<sup>10</sup>.

## **2.7. Sectoral and regional scope of the scheme**

- (20) The scheme is open to all operators of German airports. It applies to the whole territory of Germany.

## **2.8. Basic elements of the scheme**

- (21) The scheme provides for the following forms of support:
- (a) direct grants
  - (b) repayable grants
  - (c) loans
  - (d) guarantees granted by the *Länder* or municipalities
  - (e) tax advantages or delayed payments.
- (22) The federal framework scheme is an ‘umbrella scheme’ on the basis of which the granting authorities, the Federal State, *Länder* or municipalities, are able to compensate airport operators for revenue losses directly caused by the COVID-19 pandemic and to provide liquidity to airport operators suffering from liquidity shortages as a result of the COVID-19 pandemic.
- (23) Support measures falling under sections 3.1 (limited amounts of aid), 3.2 (guarantees on loans) and 3.3 (subsidised interest rates for loans) of the Temporary Framework are not further assessed in this decision as they were already subject to Commission approval (see recital 14) and as those measures remain unaltered. In the present decision the Commission will therefore only assess measures under Article 107(2)(b) TFEU and under section 3.9 of the Temporary Framework.

## **2.9. Damage compensation under Article 107(2)(b) TFEU**

- (24) Compensation for damage to airports directly caused by the COVID-19 restrictions will take the form of grants to cover up to 100 % of the damages directly linked to the restrictive measures taken by the German authorities.
- (25) The eligible costs correspond to the damage directly caused to the beneficiaries by the COVID-19 outbreak. It is possible to compensate beneficiaries for up to 100% of the damage incurred for the period from 4 March 2020 to 30 June 2020 to the extent that the individual beneficiary can demonstrate a direct causal link between the damage incurred and the COVID-19 containment measures.

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<sup>9</sup> Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

<sup>10</sup> Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

- (26) The damage is calculated on the basis of the loss of revenues from aviation (in particular airport charges) and non-aviation (in particular rents and parking fees), on the one hand, and avoided costs, on the other hand, during the compensation period 4 March 2020 to 30 June 2020. That calculation is done by comparing the results of the airport during that compensation period with the results that it would have expected to achieve absent the COVID-19 restrictions. The proxy for that counterfactual are the airport's results during the same period of the previous year (4 March 2019 - 30 June 2019).
- (27) Airport operators are obliged to take all reasonable measures to minimise the damage. Therefore, cost savings and any other support measures based on different grounds are to be deducted from the damage. Such elements to be deducted comprise in particular costs savings in relation to energy, fuel or personnel as well as avoided costs (for instance in relation to maintenance or repair works).
- (28) The calculation of the aid is in principle an ex-post calculation of the damage actually suffered. Exceptionally, if an ex-post calculation is not already submitted at the time of the application because of the urgent need for funding, an estimation of the loss of revenue on the basis of the reference period (4 March 2019 to 30 June 2020) may be made. In that case, the beneficiaries must calculate the actual damage caused by the COVID 19 restrictions by 31 December 2020. The figures must be documented in writing and any payments in excess of the damage actually incurred must be reimbursed by the beneficiaries.
- (29) The payment made to beneficiaries will be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before such payment, the authorities will recover the corresponding amount including interest from the beneficiary.
- (30) Airport operators may submit an application for aid until 30 September 2020. They are required to provide evidence of the damage actually incurred.
- (31) Grants awarded on the basis of the scheme are implemented, paid out and monitored by the respective granting authority, who is also under an obligation to ensure recovery of any overcompensation including interest.

#### **2.10. Tax advantages and deferral of charges under section 3.9 of the Temporary Framework**

- (32) The scheme provides for the possibility to i) defer the payment of taxes, ii) access instalment plans for tax liabilities more easily, iii) suspend tax debt recovery and iv) obtain expedited tax refunds.
- (33) The scheme is not limited to a specific tax. The granting authority will decide based on the specificities of the case which kind of tax advantage is the most appropriate to overcome the COVID-19-crisis. This concerns both the nature of the specific tax and the form of the advantage. Taxes concerned could, for example, be value added tax, income tax or corporate tax. Taxes collected by the municipality in question as a so-called municipal tax (e.g. business tax or property tax) are also covered by the scheme. Furthermore, in order to address liquidity shortages the relevant granting authority can also allow for the deferral of charges to the extent that such charges are directly owed by airports according to

the relevant legal provisions, including certain charges in relation to aviation security and air traffic control<sup>11</sup>. Such charges deferrals are treated as tax deferrals for the purpose of this scheme, given that, by analogy to taxes, they are levied to fund sovereign functions such as air traffic control and aviation security. This is consistent with common public law principles considering taxes and other levies as two forms of financial charges imposed to finance public expenditures.

- (34) The aid measure must be limited to the minimum necessary to address the liquidity need.
- (35) The airport operators must submit their applications for aid in the form of tax advantages by 30 September 2020. The time limit within which individual aid may be granted is 31 December 2020. The end date of the deferral of taxes and charges may not go beyond 31 December 2022.

### **2.11. Cumulation**

- (36) The German authorities confirm that aid provided under the scheme cannot be cumulated with other aid for the same eligible costs. Moreover, the beneficiaries will be required to declare any other aid requested or granted to compensate the damage caused by the COVID-19 outbreak and to pay back any overcompensation.
- (37) Where aid under the scheme other than direct compensation under Article 107(2)(b) also covers the period from 4 March 2020 to 30 June 2020, the total nominal amount of any measures under the scheme during that period may not exceed 100 % of the actual damage. A cumulation of damage compensation under Article 107(2)(b) TFEU and a measure under the Temporary Framework is therefore only possible if the damage compensation under Article 107(2)(b) TFEU covers less than the entire damage eligible for compensation.
- (38) If the beneficiary also receives support from other sources to compensate for damages or to ensure liquidity, such aid will be deducted from the aid under the present scheme.
- (39) The granting authority must require the beneficiary to self-certify any aid applied for or received in relation to the COVID-19 pandemic.

### **2.12. Monitoring and reporting**

- (40) The German authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework, including the obligation to publish relevant information on each individual aid

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<sup>11</sup> For instance, charges due by airport operators in connection with air traffic control pursuant to § 27 d para. 4 of the German Law on air transport (LuftVG).

above EUR 100 000 on the national State aid website or the Commission's IT tool within 12 months from the moment of granting<sup>12</sup>.

- (41) The German authorities also confirm that, within 12 months after the adoption of the present Commission decision, the Ministry of Transport and Digital Infrastructure will provide the Commission with a complete list of the individual aids granted in the form of damage compensation under Article 107(2)(b) TFEU.

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the measure**

- (42) By notifying the measure before putting it into effect, the German authorities have respected their obligations under Article 108(3) TFEU.

#### **3.2. Existence of State aid**

- (43) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (44) The measure is imputable to the State since it is based on a legal act from the German Federal Ministry of Transport and Digital Infrastructure, as set out in recital 15. In addition, the aid is granted and administered by the Federal State, *Länder* or municipalities. It is financed through State resources, since it is supported through public funds (either by direct grants or by foregone State revenue resulting from the tax deferrals), as set out in recital 22.
- (45) The measures under the scheme confer an advantage on the beneficiaries in the form of direct grants under Article 107(2)(b) or deferrals of taxes under the Temporary Framework. They thus relieve the beneficiaries of costs that they would have had to bear under normal market conditions.
- (46) The advantage granted by the damage compensation described in section 2.9 of the present decision is selective as it is awarded only to airport operators and more particularly to those operators that can demonstrate damage caused directly by the COVID-19 outbreak and the resulting containment measures. Likewise, the advantage granted by the tax measure described in section 2.10 of the present decision is selective since it is awarded only to certain undertakings, namely airport operators. The measure derogates from the general rule according to which the tax is paid. It therefore discriminates in favour of its beneficiaries as compared to undertakings in a comparable factual and legal situation, which are subject to the same tax. There is no justification for that discrimination based on the nature

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<sup>12</sup> Referring to information required in Annex III to Commission Regulation (EU) No 651/2014, Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014. For guarantees, loans and other forms of aid, the nominal value of the underlying instrument will be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.



or the general scheme of the tax system. Accordingly, the tax advantage is selective.

- (47) The measures under the scheme are liable to distort competition, since they strengthen the competitive position of the beneficiaries. They also affect trade between Member States, since the beneficiaries are active in the airport sector in which intra-Union trade exists.
- (48) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU.

### **3.3. Compatibility of aid under Article 107(2)(b) TFEU**

- (49) Since the damage compensation described in detail in section 2.9 of the present decision involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market and in particular with Article 107(2)(b) TFEU.

#### *3.3.1. The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU*

- (50) Article 107(2)(b) TFEU provides that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU, nor other Union legislation contains a precise definition of the notion of exceptional occurrence. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law<sup>13</sup> has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (51) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field<sup>14</sup>. In this regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee<sup>15</sup>; (ii) significant scale/economic impact<sup>16</sup> and (iii) extraordinary<sup>17</sup>.

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<sup>13</sup> Judgment of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Atzeni and others*, in Joined Cases C-346/03 and C-529/03, EU:C:2006:130 paragraph 79.

<sup>14</sup> Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

<sup>15</sup> Commission Decision of 1 August 2008, case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, paragraph 31.

<sup>16</sup> Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire –France), or because of the number of dead or injured people (Commission Decision of 11 April 2012

### 3.3.2. *COVID-19 as an exceptional occurrence*

- (52) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Wuhan municipality in China at the end of December 2019, the Chinese authorities identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak rapidly evolved, affecting not only other parts of China but also spread to the majority of countries worldwide, including all Member States. Outbreaks of novel virus infections among people are always a public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (53) The WHO declaration of a pandemic<sup>18</sup>, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidness of the spread of the virus can cause enormous consequences both in terms of fatal outcomes in risk groups and in terms of economic and societal disruption<sup>19</sup>. The necessity to adopt and encourage observance of measures aimed at interrupting transmission chains stems from that acknowledgement. According to WHO reports and observations of the current situation, such measures can result in far-reaching disruption of various economic sectors. That disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures needed to be adopted.
- (54) From March 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travel, closure of borders, closure of non-essential shops, obligation for companies to organise working from home for every position where to do so was possible and various social distancing measures.
- (55) In view of the above, the Commission considers that this event qualifies as an exceptional occurrence as it was not foreseeable, as it is clearly distinguishable

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on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, paragraph 35; Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, paragraph 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, paragraph 36), the amount of material damage, despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, paragraph 19).

<sup>17</sup> In its Decision of 19 May 2004 in case C-59/2001 (OJ L 62, 2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination did not in itself constitute an exceptional occurrence. Even though it was an unforeseeable event, it formed part of the normal commercial risks to which an undertaking is exposed.

<sup>18</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>19</sup> ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market<sup>20</sup>.

- (56) In this context, the COVID-19 can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU<sup>21</sup>.

*3.3.3. Causal link between the notified measure and the COVID-19 outbreak*

- (57) The Commission notes that first – voluntary - measures by airlines were taken as early as January 2020, when Lufthansa suspended its flights to China. The Commission furthermore notes the travel restrictions introduced from 4 March 2020 by several third countries as regards flights from Germany. Measures to contain the spread of the coronavirus culminated in a worldwide travel ban introduced by Germany from 17 March 2020, which led to a general suspension of passenger flights until 15 June 2020. Whilst travel restrictions were lifted in most of Member States from mid-June 2020, travel warnings remained in place for numerous third countries and in the same vein numerous third countries continued to apply their travel bans and flight restrictions so that air traffic started to resume only very slowly.
- (58) Therefore, the Commission considers that the causal link between the COVID-19 pandemic and the damage can be established for the period from 4 March 2020, as the first travel bans were introduced at the start of March by both Member States and third countries, until 30 June 2020 when air traffic started to resume to a certain extent. The fact that the German authorities had themselves lifted their travel restrictions as of 15 June 2020 must be set against the fact that in other countries, with flights going to and from the German airports, such travel restrictions remained in place after that date.
- (59) The Commission observes that the notified measure aims to cover the net losses of the airport operators which are caused by the suspension of flights as a direct effect of the COVID-19 restrictions.
- (60) The Commission concludes that, therefore, the notified measure is directly linked to the COVID-19 outbreak, which qualifies as an exceptional occurrence.

*3.3.4. Proportionality of the aid measure*

- (61) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in over-compensation of that damage; it should only make good the damage caused by the exceptional occurrence.

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<sup>20</sup> See for instance also Commission Decision of 12 March 2020, SA.56685 - Denmark - Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.4.2020, p. 8.

<sup>21</sup> See Commission Decision of 12 March 2020 in case SA.56685 (2020/N) – Denmark – *Compensation scheme for cancellation of events related to COVID-19*, OJ C 125, 17.4.2020, p. 1 and Commission Decision of 31 March 2020 in case SA.56765 (2020/N) – France – *COVID-19 Moratoire sur le paiement de taxes et redevances aéronautiques en faveur des entreprises de transport public aérien sous licences d'exploitation délivrées par la France*, not yet published.

- (62) The net losses (actual damages) will be calculated by taking into account the loss of aviation and non-aviation revenues and avoided costs during the compensation period (4 March 2020 – 30 June 2020) by comparing the results of the relevant operator of the German airport during that period with the results that it would have expected absent the COVID-19 restrictions. The proxy for that counterfactual is the result during the same months of the previous year (4 March 2019 - 30 June 2019). The avoided costs correspond to all the costs the airport operator would have incurred if its activity had not been affected by the COVID-19 restrictions, and that the airport has not actually incurred in that period due to its suspended activities. The proxy for avoided costs is calculated by comparing the costs actually borne during the COVID-19 restrictions (4 March 2020 - 30 June 2020) and the costs incurred in the same months of the previous year (4 March 2019 - 30 June 2019).
- (63) The Commission therefore concludes that the notified measure provides for compensation that does not exceed what is necessary to make good the damage.
- (64) The Commission furthermore notes that the scheme ensures that there will not be overcompensation of the damage. Aid granted under Article 107(2)(b) TFEU for the period 4 March 2020 – 30 June 2020 May be cumulated with aid granted under Article 107(3)(b) TFEU only to the extent that the total amount of compensation does not exceed 100% of the eligible damage calculated as described in section 2.9 (see recital (37)). As a result, cumulation is possible only if the compensation under Article 107(2)(b) TFEU does not fully cover the actual damage.
- (65) The Commission notes that the German authorities have put in place the following additional safeguards to ensure that compensation under the scheme does not exceed what is necessary to make good the actual damage suffered and thus meets the above-mentioned criteria.
- i) First, compensation in excess of the damage actually incurred will be recovered including interest (see recital 31).
  - ii) Second, beneficiaries are required to take all reasonable measures to mitigate the damage (see recital 26).
  - iii) Third, aid granted to beneficiaries will be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage (see recital 29).
  - iv) Furthermore, as explained in recital (36), aid provided under the scheme cannot be cumulated with other aid for the same eligible costs.
- (66) Therefore, the Commission concludes that the damage compensation is proportionate.

### 3.3.5. *Conclusion*

- (67) In view of the above, the Commission concludes that the damage compensation described in detail in section 2.9 of the present decision is compatible with Article 107(2)(b) TFEU.

### 3.4. Compatibility of aid under 107(3)(b) TFEU

- (68) Pursuant to Article 107(3)(b) TFEU, the Commission may declare compatible with the internal market aid *“to remedy a serious disturbance in the economy of a Member State”*.
- (69) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged in section 2 that *“the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings”*. The Commission concluded that *“State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs”*.
- (70) The Commission observes that the deferral of taxes is one of a series of measures conceived at national level by the German authorities to remedy a serious disturbance in the German economy. Furthermore, the Commission notes that the measure has been designed to meet the requirements of a specific category of aid (*“Aid in the form of deferrals of taxes and social security contributions”*) as described in section 3.9 of the Temporary Framework).
- (71) The Commission notes that the measure supports undertakings that are active in a sector which is particularly affected by the COVID-19 outbreak. In that respect the Commission acknowledges that airport operators have suffered from a drop of commercial flights passengers of 98% in April 2020 compared to traffic levels in April 2019, , with only slowly increasing passenger numbers from mid-June 2020 (when the passenger drop was still around 74% compared to June 2019) which resulted in a significant loss of income and liquidity. The Commission notes that by allowing for deferral of the payment of taxes, instalments for taxes, easier access to tax debt payment plans, interest-free deferral and expedited tax refunds, the measure eases the liquidity constraints faced by airport operators due to the COVID-19 outbreak and contributes to preserving the continuity of their economic activities. Finally, the Commission takes note that the aid will not exceed the minimum necessary to meet the beneficiaries’ liquidity need.
- (72) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State.
- (73) The Commission furthermore notes that the tax-related measures will be granted before 31 December 2020 and the end date of the deferrals will be not later than 31 December 2022. The measure therefore complies with point 41 of the Temporary Framework.
- (74) The Commission therefore concludes that the measure meets all the requirements of section 3.9 of the Temporary Framework.
- (75) The Commission furthermore notes that the German authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected. Finally, the Commission notes that Germany complies with the cumulation rules (see recitals 33 and 37).

- (76) The Commission therefore considers that the notified tax deferrals are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since the measure meets all the relevant conditions of the Temporary Framework.

#### **4. CONCLUSION**

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 Articles 107(2)(b) and 107(3)(b) of the Treaty on the Functioning of the European Union. The decision is based on non-confidential information and is therefore published in full on the Internet site:

[http://ec.europa.eu/competition/elojade/isef/index.cfm.](http://ec.europa.eu/competition/elojade/isef/index.cfm)]

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President