



EUROPEAN COMMISSION

Brussels, 26.4.2020
C(2020) 2795 final

<p>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 [...]</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.56867(2020/N, ex 2020/PN) – Germany
Compensation for the damage caused by the COVID-19 outbreak to
Condor Flugdienst GmbH**

Excellency,

1. PROCEDURE

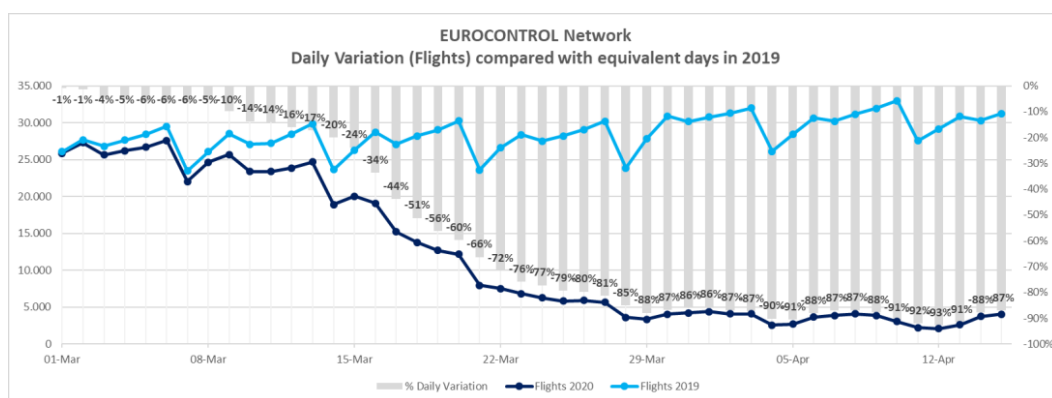
- (1) By electronic notification of 24 April 2020, Germany notified aid in the form of two loans for Condor Flugdienst GmbH (“Condor”) in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”).
- (2) During the pre-notification phase several telephone conferences between the German authorities and representatives of the Commission took place. On 29 and 30 March 2019, 1, 2, 3, 4, 7, 8, 9, 10, 13, 15, 17, 21, 22 and 23 April 2020, the German authorities submitted information.

Seiner Exzellenz Herrn Heiko MAAS
Bundesminister des Auswärtigen
Werderscher Markt 1
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- (3) Germany exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,¹ and to have this Decision adopted and notified in English.

2. BACKGROUND

- (4) The COVID-19 outbreak has resulted in travel restrictions all over the world and closed down the vast majority of passenger air transport². On 17 March 2020, the German Federal Ministry of the Interior, Building and Community asked citizens to refrain from journeys, which are not necessary. Similar travel advice was issued in other Member States. Germany also imposed extensive entry restrictions at the German Schengen external borders on 17 March 2020 in order to further reduce the risks of infection caused by the COVID-19 virus. For the same reason, temporary internal border controls were implemented for intra-European air traffic on flights arriving in Germany from Italy, Spain, Austria, France, Luxembourg, Denmark and Switzerland. Since then, there have been entry restrictions on these routes for travellers without an urgent reason for their journey. Far-reaching restrictions were also imposed at the Schengen external borders of Germany. Those concern international air transport on routes from outside the European Union. On 23 March 2020, the German Foreign Office issued a travel warning to warn against unnecessary tourist trips abroad as a whole. The travel restrictions as well as the travel warning will apply until at least 3 May 2020. Similar travel advice and restrictions to avoid the spread of the virus were issued in other Member States.
- (5) The measures implemented across Member States resulted in a heavy decline in travel with a pronounced effect on airlines. The traffic volume of airlines has already decreased significantly since mid of March 2020 in the EUROCONTROL Network³:



- (6) As a result of these measures implemented by the Member States and other States, Condor is experiencing significant revenue loss.

¹ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6/10/1958, p. 385.

² See Eurocontrol, EACCC Pandemics Factsheet, Version 3.0, 16/04/2020, p. 33.

³ Eurocontrol, EACCC Pandemics Factsheet, Version 3.0, 16/04/2020, p. 34.

- (7) On the basis of the business plan⁴ drawn up by Condor for the period 2020 to the end of September 2022, the following revenues and profits were forecasted before the outbreak of the COVID-19 pandemic:

	business year 2020 forecast second semester	business year 2021 plan	business year 2022 plan
Total revenues in EUR million	[...]	[...]	[...]
Total expenses EUR million	[...]	[...]	[...]
Result of operating activities (EBIT)	[...]	[...]	[...]
Financial result	[...]	[...]	[...]
Result of ordinary business activities (EBT)	[...]	[...]	[...]
Taxes	[...]	[...]	[...]
Annual net profit/loss(PAT)	[...]	[...]	[...]

- (8) In contrast to its pre-COVID forecasts, Condor now faces a significant reduction and/or suspension of its services, resulting in high operating losses as a result of the measures taken by the States to tackle the COVID-19 pandemic.
- (9) Initially, Condor was less affected by these restrictions than other airlines. Until mid-March 2020, Condor flights were still operating with loading factors of more than 90%, and at that time the booking level for departures until Easter was already more than 80%. After the introduction of entry bans and travel restrictions by some States, Condor had to cancel all flights to the affected destinations. With the official travel warning issued by the German Foreign Office on 17 March 2020, Condor had to cancel its scheduled flight programme until at least 15 May 2020. It has grounded a large part of its fleet and has largely ceased operations. Until mid-April 2020, Condor had to cancel a total of 3 066 flights with approximately 458 000 booked passengers. In order to at least partly compensate for this massive economic damage, Condor has opened up alternative business opportunities, such as the operation of return flights for stranded passengers and cargo flights (primarily for the transport of protective masks and medical material from China to Europe). A total of around 305 cargo flights will be operated in April 2020, i.e. almost 10% of the originally planned flight volume.
- (10) It is not yet possible to accurately quantify the effects that the pandemic will have on Condor as it is not yet even clear how long the travel restrictions will last. Condor will have, on the basis of its own calculations, liquidity needs in the

⁴ See Annex 3 “Unternehmensplanung” (business plan) of February 2020, to the “Plan gemäß § 217 ff. InsO in dem Eigenverwaltungsverfahren über das Vermögen der Condor Flugdienst Gesellschaft mit beschränkter Haftung, Amtsgericht Frankfurt am Main, Insolvenzgericht, 810 IN 1209/19 C, Insolvenzplan” (insolvency plan) of 11 February 2020.

amount of EUR 550 million in the following months due to the COVID-19 outbreak.

3. DETAILED DESCRIPTION OF THE MEASURES

3.1. Objective of the aid

- (11) The objective of the notified measures is to compensate Condor for the direct damage suffered due to the cancellation or re-scheduling of its flights as a result of the imposition of travel restrictions linked to the COVID-19 outbreak, and in particular the lockdown measures.
- (12) The measures are based on Article 107(2)(b) TFEU.

3.2. Beneficiary

- (13) Condor is a German charter airline, headquartered in Kelsterbach (Hessen), with several hubs in Germany (in Frankfurt, Düsseldorf, Munich and Hamburg). It provides air transport services to individual clients and tour operators from its hubs, with a focus on the leisure travel market to 126 destinations all over the world. Condor currently has 4 109 employees. In 2019 the turnover was EUR 1.7 billion, the balance sheet EUR 7.2 billion.
- (14) Currently, the ERDSIEK Vermögensverwaltungs GmbH⁵ is the sole shareholder of Condor.
- (15) As a charter airline, Condor provides services to tour operators and travel agencies. Besides selling seats to tour operators and travel agencies, Condor also sells so called dry seats (seats sold directly to end customers, for example via the internet). Condor serves long-haul and short-haul routes alike and serves airports that are not served by scheduled airlines.⁶ Based on the information provided by the German authorities, dry seat sales represent the minority of Condor's business with sales to tour operators accounting for [a majority] of its passengers. Concerning charter companies, Condor mainly faces competition from TUIfly (the airline of the TUI group) on routes from Germany to tourist destinations, such as Southern Europe, the Caribbean or Mexico⁷. Some routes operated by Condor are also operated by Lufthansa, Eurowings, or Ryanair. However, Condor potentially competes with such airlines only as regards its dry seat sales on charter flights to certain destinations served also by such airlines. According to the German authorities, Condor is the only provider in Germany of touristic long-haul flights alongside Eurowings.

⁵ The shareholder is a trustee that is not entitled to receive dividends.

⁶ Scheduled airlines are comprised of legacy carriers (or full service network carrier), such as Lufthansa, and low cost carriers, such as Ryanair.

⁷ TUI Group includes the airline and tour operators. In contrast to Condor, which serves also independent tour operators, TUIfly only serves tour operators of the TUI Group. On 27 March 2020, Germany decided to grant TUI a loan of EUR 1.8 billion (channelled through KfW) to compensate for the effects of the Covid 19 pandemic until normal operations can resume.

- (16) Based on seat kilometres, Condor had a market share in Germany in summer 2019 of [...], which placed it third after Lufthansa [...] and Eurowings [...], (i.e. Lufthansa group therefore reaching a share of [...]). Ryanair has a share of [...] and TUIfly [...].
- (17) Condor had a turnover of over EUR 1.8 billion in each of the last three financial years. The financial performance of the Condor group was positive in the last years. Its EBIT was positive in the last two financial years (2017/2018: EUR [...]; 2018/2019: [...]). In the past years Condor made mostly profits⁸, see table 1.

Table 1

Financial year	TEUR
01.10.2008-30.09.2009	54 901
01.10.2009-30.09.2010	61 471
01.10.2010-30.09.2011	79 184
01.10.2011-30.09.2012	45 180
01.10.2012-30.09.2013	56 898
01.10.2013-30.09.2014	62 849
01.10.2014-30.09.2015	76 463
01.10.2015-30.09.2016	(16 916)
01.10.2016-30.09.2017	[...]
01.10.2017-31.12.2017	[...]
01.01.2018-30.09.2018	[...]
01.10.2018-30.09.2019	56 904

- (18) In September 2019, Condor faced financial difficulties despite its previous good financial and economic performance as result of the insolvency of its parent company, the Thomas Cook Group. As a direct result of its strong operational and financial links with the Thomas Cook Group, especially its participation in the group cash-pool⁹, it could not cover its short-term liquidity needs on the market and had to file for insolvency under self-administration in September 2019¹⁰.

⁸ Using accounting standards in accordance with International Financial Reporting Standards (IFRS).

⁹ While Condor had participated in several cash pools within the Thomas Cook Group in the past, through which the claims arising from the profit transfer agreements between both were also offset, and from which Condor received intra-group liquidity if necessary, this possibility of financing was no

- (19) On 1 December 2019, the Insolvency Court Frankfurt am Main opened the insolvency procedure, which authorized Condor to continue its business and to draw up and implement an insolvency plan for being released from insolvency proceedings. The insolvency plan should provide for the continuation of the business, an agreement with its creditors, restructuring measures and the entry of a new investor. As Condor was a fundamentally operationally sound and profitable company whose restructuring need was not necessitated by its own business model and profitability, but by the insolvency of the Thomas Cook group, Condor's business model as a provider of holiday flights was in principle to be maintained. The main element of the insolvency plan was the operational and financial unbundling of Condor from the Thomas Cook Group, as well as the takeover of Condor by a new investor. Condor's shares were transferred to a twin-purpose trust, which purpose was to hold the shares until a new investor is found.
- (20) A bidding process for the sale of Condor took place in January 2020. Three offers were submitted. On the basis of those bids Condor's enterprise value was estimated between EUR [...] ¹¹. The successful bidder offered a purchase price of EUR [...].
- (21) The purchase agreement with the successful bidder was signed on 24 January 2020 including the notarial requirements. On 24 February, the authorization of the national competition authority was granted. In March 2020, the creditors' meeting adopted the insolvency plan by the required majority and the Insolvency Court Frankfurt am Main approved it. However, [...], the investor announced its intention to withdraw from the purchase agreement. On [...], the investor withdrew from the investment agreement [...]. The failure of the sales efforts will result in a prolonged insolvency procedure that otherwise would have been terminated in April 2020 by two to three months, giving rise to additional costs amounting to ca. EUR [10 – 20 million].
- (22) According to Germany, a new sales process will be initiated as soon as the COVID-pandemic is over.

3.3. Form, budget and duration of the aid

- (23) The aid will be provided in the form of two State-guaranteed loans with subsidized interest rates. The loans will be provided by the German Public Development Bank "Kreditanstalt für Wiederaufbau" (KfW).
- (24) The German State will provide a 100% guarantee on the loans. The decision to grant the loan is taken by KfW, which in this type of transaction is the Government's vehicle for granting the loans. The guarantee is issued by the

longer available after the compulsory liquidation of the parent company. In the absence of an independent own risk profile and as it was part of the compulsory liquidated TC group, Condor was unable to obtain financial means on the capital market.

¹⁰ On 14 October 2019, the Commission authorised a rescue loan of EUR 380 million backed by a 100% public guarantee, see Commission, decision of 14 October 2019, C(2019)7429 final, State aid SA.55394 (2019/N) Germany – Rescue aid to Condor.

¹¹ See Rothschild & Co, Project New York, Enterprise Value Comparison, Presentation, April 2020.

German Federal Government. The loans and the guarantees are inseparable, i.e. one would not exist without the other.

- (25) According to the draft credit agreements submitted to the Commission, the loans shall be granted on the following terms:

The amount for loan 1 will be EUR 529.8 million, composed of:

- Tranche A amounting to EUR 256 million;
- Tranche B amounting to EUR 273.8 million; tranche B is a revolving credit facility.

The amount for loan 2¹² will be EUR 20.2 million.

The annual interests payable on the loans shall be calculated based on the following elements: (i) EURIBOR (3-months-EURIBOR for Tranche A and loan 2 and 1-month-EURIBOR for Tranche B), (ii) [600-700] bps per year and (iii) KfW's refinancing costs.

- (26) In order to secure loan 1, Condor will order [...] in favour of KfW.

- (27) The tranches shall be end-due as follows:

Tranche A shall be fully reimbursed by 30 June 2026. The loan shall be repaid in [...] instalments of EUR [...] starting on 30 June 2021 and a one-off payment of all outstanding amounts on 30 June 2026.

Tranche B shall be due to expire on 31 December 2031. Payments made under tranche B are to be repaid at the end of each interest period, plus any interest accrued up to that date but not yet paid. Amounts repaid under tranche B may be recovered within the availability period provided that this does not exceed the total loan amount available for tranche B. From 30 June 2026, the total loan amount for tranche B shall be automatically reduced by EUR [...] at the end of each subsequent [...].

The repayment of loan 2 shall be due on 31 December 2031.

- (28) Condor is required to use all cash from or in connection with a disposal of assets, in particular in the context of a sales process (after deduction of any costs, fees and taxes related to the inflow of funds), for the immediate repayment of the loans. [...].
- (29) Germany assumes that it is likely that the expected proceeds from the business continuity of Condor or a sales process, taking into account the planning uncertainty due to the Covid-19 outbreak, are expected to be sufficient to fully repay tranches A and B and loan 2.
- (30) In the case of a sale of Condor by way of a share deal, the drafted contractual arrangements are intended to provide for a hierarchy of repayments of the various tranches: First of all, loan 2 shall be repaid, subsequently tranche A followed by

¹² Also called „Tranche C”.

tranche B. In addition, in the case of other sales of assets of Condor, tranche A shall also be reduced before tranche B. In the case of a disposal of the collaterals, a similar order of priority shall be applied to the repayment of tranches. If the shares of Condor are sold, loan 2 shall be repaid first followed by tranche A and, as the last instalment, tranche B. In the case of proceeds from other collaterals, tranche A shall take precedence over tranche B, i.e. the proceeds shall to be transferred first to tranche A and then to tranche B.

- (31) The German authorities presented three estimates for the aid element. Estimate 1 is assuming that the loan will be repaid in total as scheduled. The aid element is established by taking the difference between the spread of [600-700] bps and a “market rate plus base rate” of [...] bps plus a base rate of -0.31%. Undiscounted (discounted) this total sum corresponds to a gross grant equivalent (“GGE”) of EUR [...] million. Estimates 2 and 3 are based on a software tool which, according to the German authorities, estimates the GGE for guarantees. For estimate 2, the German authorities submit that a guarantee fee of [6-7]% is assumed with a coverage of [...]%. For estimate 3, a guarantee fee of [...]% is assumed. In Estimate 2 no aid element is found, while in Estimate 3 the GGE is EUR [...] million.

3.4. Administration of the aid

- (32) The two loans with subsidized interest rates will be provided by KfW while the German State will provide a 100% guarantee on the loans.

3.5. Legal basis

- (33) The national legal basis for granting the State-guaranteed loans is Article 3(1)(5) of the ‘Gesetz über die Feststellung des Bundeshaushalts für das Haushaltsjahr 2020’¹³ and § 2(4) of the ‘Gesetz über die Kreditanstalt für Wiederaufbau’¹⁴.

3.6. Eligible costs and modalities for compensation

- (34) The eligible costs correspond to the damage caused to Condor by the COVID-19 outbreak.
- (35) The estimated (i.e. provisional) damage is quantified based on an analysis of the effects of the COVID-19 outbreak on Condor’s finances (March 2020 – December 2020) taking into account the lost revenues as well as additional and avoided costs.
- (36) This analysis will be primarily based on the profits before taxes (EBT).
- (37) The loss in EBT is currently estimated to be EUR [285-330] million for the period March to December 2020.

¹³ Law of 21 December 2019 (BGBl. I, p. 2890).

¹⁴ Law of the KfW of 05/11/1948 (WiGBl., p. 123) as amended by the new notice of 23/6/1969 (BGBl. I p. 573), last amended by the Tenth Jurisdictional Adjustment Regulation of 31/08/2015 (BGBl. I, p. 1474).

- (38) The definitive amount of the damage (or final damage) to Condor will be assessed by Germany at the latest on 31 March 2021 based on operating accounts duly certified and audited by an independent body for the year 2020.

3.7. Commitments by Germany

- (39) The Commission takes note of the intention by Germany to sell the company within [...] months. Germany commits to submit a restructuring plan to the Commission for approval, if [...] years after the granting of the aid Condor has not been sold. This commitment ceases to apply if the aid has been repaid in its entirety. The Commission may, in response to a request by Germany grant an extension of the deadline of [...] years, if justified by exceptional circumstances, including the market evolution.
- (40) As long as at least [...] % of the aid has not been repaid or the company has not been sold, it shall be prevented from acquiring competitors or other operators in the same line of business, including upstream and downstream operations.
- (41) Germany commits to submit no later than 31 December 2020 for prior approval by the Commission the methodology that will be used to quantify the damage caused by the COVID-19 outbreak and suffered by Condor, before conducting the analysis of the quantification of the damage suffered by Condor and the aid granted.
- (42) Germany commits to review at the latest on 31 March 2021 an update of Condor's COVID-19 related losses based on Condor's annual report for 2020, its Q1 2021 report, and to calculate the precise amount of aid granted.
- (43) Germany commits to submit to the Commission by no later than 31 March 2021 the results of the analysis of the ex-post quantification of the damage suffered by Condor as a result of the COVID-19 outbreak and the aid granted, on the basis of the operating accounts of Condor for the year 2020 audited and duly certified by an independent body. Payments received from third parties, such as compensation, damages or penalties, related to the damage suffered by Condor as a result of the COVID-19 outbreak must be taken into account and deducted by the aid amount by Germany when calculating the damage.
- (44) Germany commits to ensure that Condor repays within [1-3] months any over-compensation including interest, should the ex-post assessment show that the total aid received by Condor to compensate the damage caused by the COVID-19 outbreak exceeds the total amount of the damage suffered by Condor.

4. ASSESSMENT OF THE MEASURES

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

- (45) Prior to examining if the notified measures involve State aid pursuant to Article 107(1) TFEU, the Commission notes that Germany does not dispute the State aid character of the measures.
- (46) The qualification of a measure as aid within the meaning of this provision therefore requires that the following cumulative conditions 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.

4.1.1. Imputability to the State

- (47) The decision to grant the notified measures was taken by the German Federal Government. The loans will be extended via the public development bank KfW. As set out in recital (24), the loans and the respective guarantees are inseparable because of their specific nature. The German Government imposes the granting of the loan on KfW, which is merely the vehicle of the Government for channelling the loan. KfW will not earn any interest nor bear any risk. Indeed, the interest payments are passed through to the Government and the Government extends a guarantee to KfW for the repayment of the loan.
- (48) The Commission therefore concludes that the measures are imputable to the State and implies the use of State resources within the meaning of Article 107(1) TFEU.

4.1.2. Economic advantage

- (49) The notified measures will provide an economic advantage to Condor. The notified measures allow Condor to finance its liquidity gaps for the continuation of its operations during the COVID-pandemic from April 2020 until December 2020 by giving it access to finance that Condor, given its specific situation and the given circumstances, would not have been able to obtain on the market. According to Germany, Condor could not raise the required funds on comparable conditions on the market. Furthermore, the measures confer an advantage on Condor in the form of State guaranteed subsidised loans by relieving them of costs, which it would have to bear under normal market conditions since, without the intervention by the State, it would obtain loans only at higher costs, if at all.
- (50) Without the State guarantees, KfW would bear the risk of issuing the loans to Condor. Bearing the risk but not the rewards of the loans, KfW would not have granted the loans without the State guarantee. Before issuing a guarantee, any financial institution would have had to do a risk assessment with regard to the potential default of the underlying loan. Due to the pressing liquidity needs in the current situation, there was no time for the preparation of a proper risk assessment. Hence, a financial institution would not have issued such guarantees.
- (51) Given all the above, the Commission concludes that the notified measures confer an economic advantage to Condor within the meaning of Article 107(1) TFEU.

4.1.3. Selectivity

- (52) The notified measures will be issued solely to the benefit of Condor. 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.¹⁵ This is so regardless of whether there are operators on the relevant markets that are in a comparable situation. In any event, the loans are not part of a broader measure of general economic policy to provide support to undertakings,

¹⁵ See ECJ, judgment of 04/06/2015, Commission v MOL, case No C-15/14 P, para. 60.

which are in a comparable legal and factual situation in light of the objective of the measure, active in the aviation sector or other economic sectors, but are extended only to Condor.

- (53) The State guarantees will be issued to KfW to relieve the development bank from the risk of a potential default of the loans. The guarantees of the respective loans are provided to secure solely the loans to Condor. Therefore, the Commission concludes that the notified measures are selective within the meaning of Article 107(1) TFEU.

4.1.4. Distortion of competition and impact on trade

- (54) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid¹⁶. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition¹⁷. In that regard, the fact that an economic sector has been liberalised at Union level is an element which may serve to determine that the aid has a real or potential effect on competition and on trade between Member States¹⁸. The aviation sector is open to competition in the EU and therefore sensitive to any measure in favour of one or more Member States. Condor as the beneficiary of the aid measures is active on the air transport market where intra-EU trade takes place.
- (55) The notified measures are therefore liable to distort or threaten to distort competition and to affect trade between Member States.

4.2. Conclusion on the existence of aid

- (56) In light of the above, the Commission concludes that the notified measures in favour of Condor involve State aid under Article 107(1) TFEU and will therefore assess their lawfulness and compatibility with the internal market.

4.3. Lawfulness of the aid

- (57) By having notified the planned aid to the Commission and not having put it into effect before its approval by the latter, the German authorities have observed the stand-still obligation under Article 108(3) TFEU.

4.4. Compatibility of the aid

- (58) Since the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether those measures are compatible with the internal market.

¹⁶ See, in particular, Case 730/79 Philip Morris v Commission [1980] ECR 2671, paragraph 11; Case C-53/00 Ferring [2001] ECR I-9067, paragraph 21; Case C-372/97 Italy v Commission [2004] ECR I-3679, paragraph 44.

¹⁷ Case T-214/95 Het Vlaamse Gewest v Commission [1998] ECR II-717.

¹⁸ See Case C-409/00 Spain v Commission [2003] ECR I-1487, paragraph 75.

- (59) Pursuant to Article 107(2)(b) TFEU the Commission shall declare compatible with the internal market “aid to make good the damage caused by natural disasters or exceptional occurrences”.

4.4.1. Applicability of Article 107(2)b TFEU

- (60) All undertakings including undertakings in difficulty pursuant to section 2.2 of the Rescue and Restructuring Guidelines¹⁹, which have received rescue aid under these guidelines²⁰, may be granted aid on the basis of Article 107(2)b TFEU²¹. The COVID-outbreak qualifies as exceptional occurrence pursuant to Article 107(2)b TFEU²².
- (61) Thus Article 107(2)b TFEU is applicable in the following case.

4.4.2. COVID-19 as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU

- (62) Article 107(2)(b) TFEU stipulates 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-law²³ has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (63) The characterization 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 field²⁴. In this regard, the following indicators relating to the event concerned

¹⁹ Communication from the Commission, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01), OJ C 249, 31.7.2014, p. 1–28. Condor was found in the decision of 14 October 2019, C(2019)7429 final, State aid SA.55394 (2019/N) Germany – Rescue aid to Condor, to be an undertaking in difficulty, see paragraphs 75-77.

²⁰ See Commission, decision of 14 October 2019, C(2019)7429 final, State aid SA.55394 (2019/N) Germany – Rescue aid to Condor.

²¹ See Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 2020/C 91 I/01, OJ C 91I, 20 March 2020, p. 1 para. 15.

²² See 4.4.2. below.

²³ Case C-73/03 Spain v Commission, judgment of 11 November 2004, paragraph 37; joined cases C-346/03 and C-529/03 Giuseppe Atzeni and others, judgment of 23/02/2006, paragraph 79.

²⁴ 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).

must be cumulatively met: (i) unforeseeable or difficult to foresee²⁵; (ii) significant scale/economic impact²⁶ and (iii) extraordinary²⁷.

- (64) 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 have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but has also spread to the majority of countries worldwide, including all EU 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.
- (65) The World Health Organization (“WHO”) declared the risk that COVID-19 will spread and have a global impact to be very high. According to WHO reports and observations of the current situation, the spread of COVID-19 can result in far-reaching disruption of various economic sectors. This 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 need to be adopted.
- (66) On 11 March 2020, the WHO characterised the COVID-19 disease as a pandemic. The public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 virus determine the exceptionality of the circumstances. The rapidity of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption²⁸. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement.

²⁵ 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.

²⁶ 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 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).

²⁷ 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.

²⁸ ECDC’s Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

- (67) In March and April 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. travel restrictions for non-essential travels, closure of borders, closure of non-essential shops, obligation for companies to organise working from home for every position where this is possible and various social distancing measures.
- (68) In view of the above, the Commission considers this event qualifies as an exceptional occurrence, as it was not foreseeable and is clearly distinguishable from ordinary events, by its character and its effects on the affected undertakings and the economy in general, and therefore falls outside the normal functioning of the market.
- (69) The Commission therefore concludes that the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU²⁹.

4.4.3. Direct link between the damage to be compensated for by the notified aid measure and the exceptional occurrence

- (70) Article 107(2)(b) TFEU provides that aid to make good damage caused by natural disasters or exceptional occurrences is compatible with the common market. Since this is an exception to the general principle that State aid is incompatible with the common market, that provision must be interpreted narrowly. The Court has held that only damage caused by natural disasters or exceptional occurrences may be compensated for under that provision. It follows that there must be a direct link between the damage and the exceptional occurrence, which the State aid measure provides compensation for and that as precise an assessment as possible must be made of the damage suffered by the beneficiary concerned³⁰.
- (71) The COVID-19 outbreak qualifies as exceptional occurrence pursuant to Article 107(2)(b) TFEU (see 4.4.2.).
- (72) The Commission takes note that the COVID-19 outbreak has resulted in travel restrictions all over the world and closed down the vast majority of passenger air transport³¹ (see recital 4). Due to those travel restrictions and further measures adopted by the Member States Condor had to ground a large part of its fleet and has largely ceased operations. Despite efforts to at least partly compensate for this massive economic damage, through opening up of alternative business opportunities, such as the operation of return flights for stranded passengers and cargo flights flight volume has been reduced to 10% of the originally planned volume. The German authorities identified the damage caused by the COVID-19 pandemic as the lost profits because of COVID-19. A direct link between lost

²⁹ See Commission Decision of 12 March 2020 in State aid case SA.56685 (2020/N) – Denmark – Compensation scheme for cancellation of events related to COVID-19 and Commission Decision of 31 March 2020 in State aid case SA.56765 (2020/N) – France – CODIV-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.

³⁰ See Joined Cases C-346/03 and C-529/03 *Atzeni and Others* [2006] ECR I-1875, paragraph 79 and the case-law cited; Case C-73/03 *Spain v Commission*, judgment of 11 November 2004, paragraph 37.

³¹ See Eurocontrol, EACCC Pandemics Factsheet, Version 3.0, 16/04/2020, p. 33.

profits because of COVID-19 and the COVID-19 can be drawn on this basis, as Condor had to cease operating due to the measures of the Member States and third States taken to tackle the COVID-19 outbreak.

- (73) As, at this stage, the COVID-19 crisis is still ongoing and the full impact of the crisis on Condor is not yet known, neither the German authorities nor the Commission are currently in a position to quantify precisely the damage suffered by Condor. Therefore, the estimated damage of Condor will be assessed. It will be established based on the general methodology set out in recitals 4.4.4.2.
- (74) To only take into account damage caused by the exceptional occurrence, the damage will be calculated as the difference between the 2020 forecast as established before the COVID-19 outbreak and the forecast established taking into consideration the consequences of the COVID-19 pandemic.
- (75) The German authorities estimate the provisional (ex-ante) damage by summing up the differentials in the EBTs for the forecasts before and after the COVID-19 outbreak for the period March to December 2020. The forecast before COVID-19 was established in February 2020. The forecast after COVID-19 was estimated in March and updated beginning of April 2020.
- (76) The German authorities compared the revision in the budgets pre and post-COVID-19 with figures provided by IATA. Notably, the revenue passenger kilometres (RPK) are expected to be reduced by 46% compared to the previous year. Condor's COVID scenario is in line with this estimate. Condor RPK are forecasted to reduce by 47% and revenues reduce accordingly (in line with Condor's specific customer profile and network, seat load factors and yields). During the second quarter RPK are most impacted – by 70% worldwide according to IATA (comparing with 38% worldwide in 2020). Condor's planning assumes almost no production at all in Q2, i.e. is even more drastic. This is in line with the “above average” downturn in Europe (also expected by IATA) as well as Condor's business focus on leisure travel, which is forecasted to be even more impacted and to come to an almost complete stop in April-June 2020. IATA expects a strong rebound in 2021, which is in line with Condor's planning, which expects a full recovery by April 2021 (Easter Holidays in Germany). Variable cost sum up to about [...] % of total operating cost at Condor, instead of the average cost structure stated by IATA with only 51% of the cost base being variable. That means, the expected damage for Condor should be lower than for companies with lower variable cost.
- (77) The Commission expects that operations of airlines will be heavily impacted by the lock-down measures taken by various Governments worldwide until the end of 2020. Condor expects to resume full business activities in April 2021 at the earliest. For Q2 2020, Condor expects almost no flights. Only as of Summer 2020, the passenger figures are expected to steadily improve.
- (78) The Commission notes that the historical 2019 figures, whilst real data, might not be an appropriate comparator since in 2019 Condor was part of the Thomas Cook Group and therefore derived business from that partnership. In addition, in September 2019, Thomas Cook went into bankruptcy. Given those two factors the Commission does not consider the historical figures as an adequate comparison for the damage estimation.

- (79) The Commission accepts the difference between the EBT as planned for March 2020 to December 2020 before and after the lockdown measures were announced to limit the COVID-19 outbreak, as long as the extent of the crisis and related lockdowns around the globe remains. Given this comparison, the Commission considers the revision in the budget to be reasonably justified. The comparison results in an amount of EUR [250-270] million. The Commission considers legitimate to add additional fees of EUR [10-20] million for the prolonged insolvency period set out in recital 21, which were not foreseeable when the EBT forecast after COVID-19 outbreak was made in March and subsequently updated early April 2020.
- (80) The Commission's estimation of the expected damage amounts therefore to EUR 276.7 million (undiscounted). Both the Commission as well as the German authorities did not discount the differentials when determining the sum.³²
- (81) To verify the estimated damage of 276.7 million, the Commission analysed this estimate in light of the actual EBTs achieved March 2019 to December 2019 instead of the pre-COVID-19 forecast for the period March 2020 to December 2020. Whilst the Commission considers that the historical figures might not be comparable to the 2020 forecast without COVID-19 (see recital 83) it also calculated the estimated damage based on the historical figures to assess whether the forecasts are reasonable.³³ The Commission finds that based on a comparison of historical 2019 data and 2020 forecasts without COVID-19 the damage is EUR [...] million, which is larger than when using forecasts.
- (82) To conclude, the main assumptions as well as the estimated damage using the forecasts appear to be solid.
- (83) As this estimated damage in the amount of EUR 276.7 million (undiscounted) is calculated as the difference between the 2020 forecast as established before the COVID-19 outbreak and the forecast established taking into account the consequences of the COVID-19 pandemic, it is directly caused by the COVID-19 pandemic.
- (84) The notified measures aim at compensating Condor for these losses due to the cancellation or re-scheduling of its flights as a result of the imposition of travel restrictions linked to the COVID-19 outbreak (see recital (11)) by granting two loans to cover the additional liquidity needs of Condor caused by the COVID-outbreak.
- (85) Therefore, the notified measures are directly linked to the COVID-19 pandemic, which qualifies as an exceptional occurrence, and to the damage caused.

³² When discounting with [...]%, the expected damage is EUR [...] million + EUR [...] million = [...] million.

³³ To cater for the fact that Condor's EBT in September 2019 was tremendously impacted by the bankruptcy of Thomas Cook (EUR [...] billion), it replaced the September difference by the average of August and October.

4.4.4. *Aid proportionate to the damage*

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

4.4.4.1. Estimate of the damage caused by COVID-19

- (87) The Commission's estimation of the expected damage amounts to EUR 276.7 million (undiscounted) (see 4.4.3).

4.4.4.2. Amount of the Aid

- (88) As regards the amount of the aid, the German authorities presented three estimates for the aid element in the given measures. Estimate 1 is assuming that the loans will be repaid in total as scheduled. The aid element is established based on the difference between the spread of [600-700] bps and a "market rate plus base rate" of [...] bps and a base rate of -0.31%. The [...] bps are based on the Reference Rate Communication³⁴. They correspond to the loan margin for firms in the [...] rating category and [...] collateralisation³⁵. Undiscounted (discounted) this total sum corresponds to an aid element of EUR [...] million and is therefore well below the estimated damage.
- (89) The Commission notes that the loan contract does not provide for an interest rate of [600-700] bps, but rather [600-700] bps plus EURIBOR plus an adjustment for KfW's refinancing rate. However, since the 3-months EURIBOR is currently set at -0.161% and the KfW adjustment for its refinancing rate is very small, the estimated aid amount is only marginally impacted. The adjustment for KfW's refinancing rate is very small given KfW's excellent credit rating. In addition, Estimate 1 is based on the assumption that the full amount of all tranches is drawn immediately and is only repaid following the repayment schedule. This assumption overestimates the aid element since the German authorities argue that Condor is expected and (only allowed) to draw on tranche B as liquidity needs arrive over time. Since the impact is very small, the German estimate on the aid element is not materially impacted.
- (90) Estimates 2 and 3 are based on a software tool to estimate GGE for guarantees. In Estimate 2, no aid element is found, while in Estimate 3, the GGE is EUR [...] million. Since the Commission does not have sufficient information about the underlying parameters, it cannot reconcile or comment on these figures.

³⁴ Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6–9).

³⁵ That means, the yearly interest rate advantage because of the measure equals [...] % - [6-7] % = [...] %. For example, for the first 12 months for which there is an outstanding amount of EUR 550 million, the aid element for that period equals 550 million * [...] % = [...] million. For each period, the outstanding loan amount is reduced according to the repayment schedule, see Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008).

- (91) The Commission agrees with the methodology used for Estimate 1 if one applies the corrections to the EURIBOR, the KfW refinancing rate, and the drawn amounts. However, it further notes that Estimate 1 relies mainly on the assumption that [...] bps are the correct market spread and that these loans will be repaid as scheduled.
- (92) However, the Commission considers that the repayment of the loans might be risky since it heavily depends on the timing of the expected sale, the achieved sales price and the earned cash flows (used for down payments) until then. The Commission therefore will determine the GGE if the sale will take place, as announced and envisaged, in [...]. It will split the assessment by tranches since tranches A and B and loan 2 have different seniorities in case of prepayment because of sale or in liquidation. In particular, the Commission notes that if sold, loan 2 will be first repaid, thereafter tranche A and then tranche B. The collateral for A and B will be first used for A and then for B.
- (93) By [...], the Commission finds that tranche A is planned to have EUR 193.5 million outstanding, while loan 2 amounts to EUR 20.2 million. A similar sales price as achieved in the beginning 2020 (EUR [...] million) would be enough to repay tranche A and loan 2 and even exhibit [...]. While it is uncertain which price would be achieved for Condor in [...] and so whether a buffer of EUR [...] million is sufficient, the Commission takes note of two arguments which would speak in favour that such price is realistic. The price of EUR [...] million was achieved in an open tender procedure, first, within a short time frame of six months and, second, for a company that already entered insolvency proceedings. For the new sales process, the time frame would be longer and Condor would have left insolvency proceeding. Since the repayment likelihood for these two tranches could be considered sufficiently high, the Commission uses the interest rate differential to quantify the aid element. The Commission applies 1000 bps, the credit margin established in the Reference Rate Communication³⁶ for a loan to a company [...] financial condition. On the basis of this methodology, until June 2022, the Commission finds for the outstanding balance for tranche A and loan 2, aid of EUR 18.9 million (A) and EUR 1.4 million (loan 2), undiscounted.
- (94) For tranche B the proceeds from the sale are likely not sufficient to repay the outstanding amount which means that it must be repaid by cash flows achievable in the future. In turn, that lowers the achievable equity sales price since cash flows to equity holders will be reduced. Thus, the Commission considers here conservatively an aid element of the full notional amount of EUR 273.8 million. However, since the German authorities charge interest of [6-7] % plus EURIBOR and KfW adjustment, the Commission subtracts the envisaged interest payments from the notional amount since a grant would be interest-free. For that calculation, it uses the expected balance and, for simplicity, a rate of [6-7]% to be paid.³⁷ The interest until June 2022 amounts to EUR 27 million, undiscounted.

³⁶ Communication from the Commission on the revision of the method for setting the reference and discount rates (*OJ C 14, 19.1.2008, p. 6–9*).

³⁷ The conclusion of this calculation does not change for reasonable ranges of KfW's refinancing costs and EURIBOR rates.

- (95) Summing up all aid elements, + EUR 18.9 million (A), + EUR 1.4 million (loan 2), + EUR 273.8 million – EUR 27 million (B), the Commission arrives at an estimated total aid of EUR 267.1 million for the State guarantee and the corresponding loans.³⁸

4.4.4.3. Comparison of the damage estimation with the amount of the aid

- (96) When comparing both elements, the aid calculated in an amount of EUR 267.1 million as set out in recital 95 and the damage of EUR 276.7 million as set out in recital 80, the Commission notes that the aid is less than the estimated damage suffered by Condor due to the COVID-19 outbreak.
- (97) The Commission therefore concludes that the notified measures provide for compensation that does not exceed what is necessary to make good the damage.
- (98) The Commission notes that the German authorities have committed to submit to the Commission by no later than 31 March 2021 the results of the analysis of the quantification of damage and aid granted, on the basis of the operating accounts of Condor for the year 2020 audited and duly certified by an independent body.
- (99) If the analysis shows that Condor has been over-compensated, also taking into account other public aid measures covering the same damage, the German authorities commit to ensure that Condor repays any such over-compensation.
- (100) The Commission considers that the mechanism set out in recitals 41 to 44 ensures that the aid will not exceed the damage induced by the COVID-19 pandemic and that therefore no overcompensation will take place.
- (101) In view of the above, the Commission concludes that the measures are proportionate.

4.4.5. Cumulation

- (102) The German authorities have committed to ensure that Condor repays any over-compensation, should the ex-post assessment mentioned in recitals 41 to 43 show that the total aid received by Condor to compensate the damage caused by the exceptional circumstances linked to COVID-19 outbreak, exceeds the total amount of the damage suffered by Condor (see recital 44).

4.4.6. Conclusion on the compatibility of the aid

- (103) The Commission accordingly finds that the aid measures compensate damage caused by the COVID-19 outbreak only and that it introduces an appropriate mechanism to ensure that there will be no overcompensation. Therefore, the Commission considers that the objective of the aid measures is to restore the situation of Condor to that which existed before the exceptional occurrence and to enable it to resume its activities, but does not give it an additional advantage

³⁸ The Commission also determined the aid when discounting when assuming a discount rate of [...]% (spread) - 0.31% (base rate) = [...]%. The corresponding value is 268.4 million.

beyond compensating partially for the damage caused by the COVID-19 outbreak.

- (104) In the light of the findings above, the Commission concludes that the notified measures meet the conditions of compatibility with the internal market set out in Article 107(2)b TFEU. The Commission therefore considers that the notified measures provided to Condor are compatible with the internal market.

5. 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 Article 107(2)(b) of the TFEU.

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

